LIABILITY WITHOUT FAULT: AN ANALYSIS OF THE SCOPE OF WORKMEN'S COMPENSATION WITH SPECIFIC EMPHASIS ON ITS DEVELOPMENT IN IOWA

An abstract of a Thesis by
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Several million persons become the victims of industrial accidents annually. The suffering of an occupational injury by a wage earner is a severe blow. His income may be temporarily or permanently interrupted while at the same time his expenses increase because of the need for medical care. In the event of a permanent disability, his future earning power may be decreased. Workmen's compensation laws are designed to indemnify injured workers and their families. Their objective is the payment of medical costs, the continuance of the worker's income during the entire period of his disability, the compensation of a permanently disabled worker for any future reductions in earning power and the payment of benefits to the dependents of a fatally injured worker.

This study examines the scope and development of workmen's compensation and the extent to which Iowa's law meets the goals of providing sure, prompt and reasonable income and medical benefits to work-accident victims, or income benefits to their dependents, regardless of fault. The current benefit provisions of Iowa's Workmen's Compensation Law in relation to selected states and to wage and income data are examined in order to evaluate their adequacy in terms of the benefits that currently accrue to a worker. Survey data is used to deter - mine an approximation of the weekly disability payment in Iowa due to the general lack of statistics in the area of workmen's compensation paid.

Iowa was among the first states to recognize the plight of the injured worker and to enact a workmen's compensation statute. The benefits provided include periodic cash payments, lump-sum payments, medical care to the worker during the period of disability and death benefits to the worker's survivors. However, the stated intent of Iowa's Workmen's Compensation Law to replace two-thirds of a worker's weekly wage during total disability is defeated by the existence of weekly maximum dollar limits on benefits. Iowa's workmen's compensation benefits also fall short of the poverty income guidelines established by the Social Security Administration. Employees who suffer a disabling injury of long duration and the dependents of fatally injured workers are most affected. Unless persons in this group have some supplementary income, the workmen's compensation benefits they receive are not sufficient to keep them above the level of poverty.

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CHAPTER I

INTRODUCTION

Modern industrial society occasions the disabling, or crippling or killing of some of its workers. Despite the best of safety programs designed to protect the worker, several million persons are the victims of industrial accidents annually. The suffering of an occupational injury by a wage earner is a severe blow. His income may be temporarily or permanently interrupted while at the same time his expenses increase because of the need for medical care. In the event of a permanent disability, the worker's future earning power may be diminished.

Workmen's compensation laws are designed to indemnify injured workers and their families. Their objective is the payment of medical costs, the continuance of the injured worker's income during the entire period of his disability, the compensation of a permanently disabled worker for any future reduction in earning power and the payment of benefits to the dependents of a fatally injured worker. They are based upon the principle of "liability without fault" so that compensation is made irrespective of fault on the part of either the employer or the employee.

The problem may be simply stated: How well do current workmen's compensation laws, more specifically Iowa's Law, meet the goals of providing sure, prompt and reasonable income and medical benefits

to work-accident victims, or income benefits to their dependents, regardless of fault?

In its application to the problem, it is the purpose of this study to examine: (1) employers' liability under the common law as it existed prior to the inception of workmen's compensation; (2) early attempts at workmen's compensation legislation in Europe and the United States; (3) the historical development of workmen's compensation in Iowa; (4) workmen's compensation benefits in selected states relative to Iowa's law; (5) the adequacy of Iowa's workmen's compensation benefits based upon income criteria and Federal guidelines; and (6) recent experience under Iowa's Workmen's Compensation Law.

It is important to examine the common law of employer's liability for it was the dissatisfaction with this system that gave rise to workmen's compensation. A review of early attempts at workmen's compensation legislation in Germany and Great Britain, the countries where the idea first developed, necessarily follows. It was these attempts and the early laws in the United States which served as a pattern for Iowa's Workmen's Compensation Act.

The primary concern of this study is to examine Iowa's Workmen's Compensation Law. In order to fully understand and appreciate the Iowa law it is necessary to trace its development from its inception to the present day. It is also of value to examine Iowa's benefits as they relate to those of other states so that it will be possible to place Iowa in perspective to states having similar and divergent demographic and economic characteristics.

The adequacy of Iowa's workmen's compensation benefits must be determined on the basis of how well they meet the economic need of

the injured worker. Wage and income data, therefore, are used as the criteria against which such benefits are compared. Finally, benefit statistics are generated to review the recent payments under Iowa's Workmen's Compensation Law in order to compare the actual experience with the stated objective of the Law.

CHAPTER II

EMPLOYERS' LIABILITY

Employers' liability concerns the right of an employee to recover damages from his employer for injuries sustained while in the course of his employment and alleged to have arisen out of it. Before 1837 there were no cases on the liability of a master to his servant. In 1837, Lord Abinger, in his decision in the case of Priestly v. Fowler,[1] first introduced into English common law the liability of an employer to his servant for personal injuries.

Common Law of Employers' Liability

Under English common law, there were certain legal duties of protection which the master owed to his servant, to whom he was liable in damages for the injurious consequences of his neglect to use due care in the performance of such duties. These duties were to employ suitable fellow servants, to establish and promulgate proper rules, to provide a safe place to work, to furnish safe appliances and to warn of danger.[2]

If the master had properly performed all of these duties, he could not be held liable for injuries to a servant arising "out of

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[1]Priestly v. Fowler, 3 M. & W. 1 (1837).

[2]G. F. Michelbacher and Thomas M. Nial, Workmen's Compensation Insurance (New York: McGraw - Hill Book Co., 1925), p. 60.

and in the course of his employment."[1] The test of performance in each instance was relative. There had to be a reasonable compliance with the duty, taking into consideration the circumstances, the nature of the business, and the usual means of conducting it. Reasonably safe meant safe according to the usages, habits and ordinary risks of the business.[2] In no case, however, was the master deemed to be the guarantor of the safety of his employees. His duty extended only to the exercise of proper diligence.

The servant, in order to recover damages for a personal injury, had the burden of proof in first showing that the master failed to exercise due care in the performance of his duties and second, that such failure was the proximate cause of the injury. The cause and effect rule of the law of negligence thus became an integral part of employers' liability.

In an action brought by a servant to recover damages for personal injury the master could avail himself of certain well-defined defenses. He could allege that the injury was caused by the negligence of a fellow-servant, that the plaintiff contributed negligently to its occurrence or that the servant assumed the risk of his injury. The principles governing these defenses, in England and the United States, were embodied in three legal doctrines; the doctrine of assumption of risk, the doctrine of common employment and

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[1]Ralph H. Blanchard, Liability and Compensation Insurance (New York: D. Appleton & Co., 1917), p. 44.

[2]Ibid.

the doctrine of contributory negligence.[1]

Assumption of risk. Under the doctrine of assumption of risk a master was not liable to his servant for injuries resulting from the ordinary risks of employment of which the servant was fully aware. The decision in the case of Farwell v. Boston and Worchester Railroad Corp.[2] stated that:

> The general rule, resulting from considerations as well of justice as of policy, is, that he who engages in the employment of another for the performance of specified duties and services, for compensation, takes upon himself the natural and ordinary risks and perils incident to the performance of such services. . . .[3]

While the principle of this doctrine was not peculiar to the relation of master and servant, it was most frequently used in actions involving that relationship.[4]

Common employment. The doctrine of common employment or the "fellow-servant rule" relieved the employer of liability if he could show that the accident was the result of negligence on the part of a fellow-servant of the injured employee. In its most extreme form it was applied to all servants working for the same master, regardless of the nature of their duties.[5] This doctrine was first

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[1]Herman Miles Somers and Anne Ramsay Somers, Workmen's Compensation (New York: John Wiley & Sons, 1954), p. 18.

[2]Farwell v. Boston & Worchester R.R. Corp., 4 Metcalf 49 (1842).

[3]Ibid.

[4]Blanchard, op. cit., p. 46.

[5]Ibid.

suggested in the case of Priestly v. Fowler.[1] In this English case, decided in 1837, a butcher's boy sued his master for injury which he had suffered through the breakdown of his master's cart. The cart broke because it was overloaded. When the overloading was proved to be due to the negligence of a fellow servant, the judge barred the butcher's boy from recovery. In deciding the case, Lord Abinger wrote:

> Where should we stop? We should have a master liable to his servant for the negligence of the chambermaid in putting him into a damp bed; for the negligence of the upholsterer in sending in a crazy bedstead, whereby he was made to fall whilst asleep; for the negligence of the cook in not properly cleaning the saucepan; for that of the butcher in sending in bad meat; and for that of the builder who, by putting in bad foundations, caused the house to fall, and bury the master and servant together.[2]

The rule of Priestly v. Fowler[3] was adopted in the United States in Murray v. South Carolina Railroad Co.[4] in 1841. In this case a fireman brought suit for injuries caused by the negligence of an engineer who refused to alter the speed of the train, even after his attention had been called to an obstacle on the track which gave rise to the accident. The Supreme Court of South Carolina asserted that the plaintiff assumed the risk of the negligence of his fellow-servants and he was not allowed to recover damages.

The case of Farwell v. Boston and Worchester Railroad

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[1]Priestly v. Fowler, 3 M. & W. 1 (1837).

[2]Ibid. [3]Ibid.

[4]Murray v. South Carolina R.R. Co., 1 McMullan 385 (1841).

Corp.[1] became the leading case, both in this country and in England, on the doctrine of common employment.[2] Chief Justice Lemuel Shaw of Massachusetts stated in his opinion that the rule that a master should be liable for the acts of his servants presupposed that the master and the person injured "stand to each other in the relation of strangers."[3] Therefore, Farwell, an engineer, could not recover on the ground that the corporation was responsible for the acts of a switch-tender by whose negligence he had been injured. The court held that the risk of a fellow-servant's negligence was an ordinary risk of the employment.

Contributory negligence. Under the common law doctrine of contributory negligence, one who was injured by the negligence of another was barred from the recovery of damages if he had in any way contributed to the occurrence of the injury by his own negligence. In an action to recover damages from a master on account of an injury, the burden of proof was on the defendent to show that the servant, by his own negligence, contributed to the occurrence of the injury. Whereas the burden of proof was on the defendent in England, the United States Supreme Court placed the burden of proof on the plaintiff to show an absence of contributory negligence.[4]

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[1]Farwell v. Boston & Worchester R.R. Corp., 4 Metcalf 49 (1842).

[2]Blanchard, op. cit., p. 47.

[3]Farwell v. Boston & Worchester R.R. Corp., 4 Metcalf at 51 (1842).

[4]Ibid.

Modifications of the Common Law. Throughout the nineteenth century the origin and justice of the rule of employers' liability were bitterly contested. However, by the last half of the nineteenth century a master, like anyone else, was civilly responsible for his own personal negligence.

The common law of employers' liability in Egland and the United States was modified to a considerable extent, both by statute and by judicial interpretation. The doctrine of assumption of risk was made inoperative in cases of injury arising through the violation of safety statutes by the employer. The doctrine of comparative negligence, to the effect that damages were reduced in proportion to the negligence attributable to the employee, replaced the rule that contributory negligence was an absolute bar to recovery. The doctrine of common employment was modified to a great extent, both by limiting the definition of a fellow-servant and by depriving the employer of this means of defense. Statutes were passed completely abolishing the fellow-servant rule or abolishing it in certain industries.

The first attempt to modify the common law of employers' liability by statutory enactment was made in England in 1880, when Parliament passed the Employers' Liability Act. This act provided for a modification of the fellow-servant rule and enabled the personal representatives of a deceased employee to recover damages for death caused by negligence. The first such statute to be passed in the United States was enacted in Alabama in 1885 and was followed by the Massachusetts act of 1887.[1] Both of these acts as well as

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[1]Blanchard, op. cit., p. 53.

those of other states were modeled closely after the English statute. A federal statute was enacted in 1908 to apply to interstate railroads.[1]

The employers' liability laws developed in sympathy with the trend of law and opinion in other fields. When the first cases involving the relation of master and servant were decided, the doctrines of individualism and laissez faire were widely accepted. The early decisions reflected the prevailing philosophy and their rigidity depended largely on the economic philosophy of the presiding judge. This is evident from the statement by Chief Justice Shaw in the Farwell case that:

> . . .it is competent for courts of justice to regard considerations of policy and general convenience, and to draw from them such rules as will, in their practical application, best promote the safety and security of all parties concerned.[2]

With changes in the organization and methods of industry, the inadequacy of the philosophy of laissez faire and the injustice of the common law principles of employers' liability became increasingly evident in the United States and in Europe. The common law, as an instrument of relief, was inadequate and burdened the worker. Had it not been so, there would have been no need for the step eventually taken, workmen's compensation legislation.

Common Law in Iowa

The system of accident indemnity that existed in Iowa at the

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[1] Ibid.

[2] Farwell v. Boston & Worchester R.R. Corp., 4 Metcalf at 52 (1842).

beginning of the twentieth century was based upon the common law of employer's liability. Although the common law principles had been modified somewhat, neither the legislation nor the Iowa courts had overthrown the fundamental principles of liability as established under English common law.

Assumption of risk. In Iowa, as in English common law, when the plaintiff in an employers' liability action made it appear that his injury was caused by a condition for which the employer was responsible, the master could escape liability by asserting that the employee had assented to the negligence and assumed the risk thereby waiving his right to recover damages.[1] To be barred from recovery the employee did not have to consciously or contractually agree to release his employer from the obligation to use ordinary care for his safety. By continuing work knowing that the employer was negligent in the particular respect that caused his injury, the law stated that the employee assumed the risk of being injured thereby.[2] As late as 1910 it was reasoned by the courts that an employee was free to quit the service of a master who did not remedy a dangerous condition.[3]

Actual knowledge of the dangerous condition did not need to be shown in order to charge the employee with assumption of risk.

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[1]Greenleaf v. Illinois Central R.R. Co., 29 Iowa 14, 4 A.R. 181 (1870).

[2]Kroy v. Chicago, Rock Island & Pacific Ry. Co., 32 Iowa 357 (1871).

[3]Duffey v. Consolidated Block Coal Co., 147 Iowa 225, 124 N.W. 609 (1910).

Every person was held to know that which required only the exercise of ordinary care.[1] The rule was that ordinary care required the employee to use reasonable diligence to discover the open and obvious dangers around him. The employee assumed to have knowledge of any danger which it would have been possible to discover by the exercise of such care as persons of ordinary intelligence may be expected to take for their own safety.[2]

This rule was modified somewhat so that an employee was not required to inspect or search for obscure dangers or defects in his place of work or in the machinery or appliances which were furnished to him.[3] Whether an employee had knowledge of and appreciated a particular risk depended upon his age and experience, his opportunities for acquaintance with his surroundings, the means of information at his command and the obviousness of the danger to which he was exposed.[4]

An employee, then, was chargeable with knowledge and appreciation of all dangers which were open and obvious or discoverable by the exercise of reasonable care. Where the risk was not apparent, it was not assumed by the worker unless there had been circumstances

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[1]Bryce v. Chicago, Milwaukee & St. Paul Ry. Co., 103 Iowa 665, 72 N.W. 780 (1897).

[2]Olson v. Hanford Produce Co., 118 Iowa 55, 91 N.W. 806 (1902).

[3]Shebeck v. National Cracker Co., 120 Iowa 414, 94 N.W. 930 (1903).

[4]Nugent v. Cudahy Packing Co., 126 Iowa 517, 102 N.W. 442 (1905).

showing that it should have been appreciated by him. The assumption of risk doctrine relieved the master of all liability for the non-discharge of his common law duties. Recovery by an injured employee was thus banned for failure of the employer to provide a safe place to work.

The common law was modified so that the assumption of risk defense by the employer could be negated if the worker showed that he was justified in continuing at work, even though he knew and appreciated the danger to which he was exposed by reason of his employer's negligence. Such justification was afforded by several circumstances. First, an employee did not assume the risk if he only became aware of it at the moment of his injury. Second, when the employee continued at work upon the employer's assurance that a dangerous condition would be remedied, the worker's assumption of the risk was terminated. His right to recovery, however, was available only as long as he could reasonably expect the promise to be fulfilled. Third, a worker was considered justified in continuing to work if it was by the express command of the employer or his representative or if such superior assured the worker that it was safe to continue work.[1]

Assumption of risk was sanctioned in the laissez faire economics of the nineteenth century. It was based largely on the reasoning that if an employee, rather than quit his master's employment, chose to work in a situation which exposed him to abnormal

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[1]Miller v. White Bronze Monument Co., 141 Iowa 701, 118 N.W. 518 (1908).

hazard then the risk of being injured was his own.[1] It may be true, in an academic sense, that the worker was at liberty to seek other employment if he did not like his employer's methods. But, in a practical sense, poverty, ignorance of other opportunities and scarcity of employment often compelled a worker to accept employment on any terms that were offered. The worker's liberty to protect himself against undue hazard by exercising his right to quit, was, in effect, nonexistent. In 1905, the Iowa Supreme Court recognized that the doctrine of assumption of risk was inequitable but declared its inability to modify the judge-made law that had developed.[2]

The Iowa General Assembly passed the first Assumption of Risk Act in 1907.[3] This act was subsequently amended slightly by the Thirty-third General Assembly and the result was the Assumption of Risk Act of 1909 which read as follows:

> In all cases where the property, works, machinery or appliances of an employer are defective or out of repair, and where it is the duty of the employer from the character of the place, work, machinery or appliances to furnish reasonably safe machinery, appliances or place to work, the employe shall not be deemed to have assumed the risk, by continuing in the prosecution of the work, growing out of any defect as aforesaid, of which the employe may have had knowledge when the employer had knowledge of such defect, except when in the usual and ordinary course of his employment it is the duty of such employe to make the

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[1]Greenleaf v. Illinois Central Ry. Co., 29 Iowa 14, 4 A.R. 181 (1870).

[2]Arenschield v. Chicago, Rock Island & Pacific Ry. Co., 128 Iowa 677, 105 N.W. 200 (1905).

[3]Iowa General Assembly, Acts and Joint Resolutions of the Thirty-second General Assembly (Des Moines, Iowa: State of Iowa, 1907), Chapter 181.

> repairs, or remedy the defects. Nor shall the employe under such conditions be deemed to have waived the negligence, if any, unless the danger be imminent and to such extent that a reasonably prudent person would not have continued in the prosecution of the work; but this statute shall not be construed so as to include such risks as are incident to the employment. And no contract which restricts liability hereunder shall be legal or binding.[1]

The language of the act was that of the common law and was intended to nullify the doctrine of assumption of risk due to the master's negligence. It was no longer necessary to show that the employer had actual knowledge of a given defect. If he would reasonably have known of it, an injured worker could recover damages. The Assumption of Risk Act of 1909 was intended to be remedial in nature, thereby abolishing the common law doctrine of assumption of risk.

Common employment. The common law doctrine of common employment, or the fellow-servant rule as it is also called, had its basis in the 1837 English case of Priestly v. Fowler[2] and the Murray[3] and Farwell[4] cases in the United States. The earliest Iowa Case presenting the doctrine of common employment reached the Supreme Court of Iowa in 1860.[5] The Court stated that:

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[1]Iowa General Assembly, Acts and Joint Resolutions of the Thirty-third General Assembly (Des Moines, Iowa: State of Iowa, 1909), Chapter 219.

[2]Priestly v. Fowler, 3 M. & W. 1 (1837).

[3]Murray v. South Carolina R.R. Co., 1 McMullan 385 (1841).

[4]Farwell v. Boston & Worchester R.R. Corp., 4 Metcalf 49 (1842).

[5]Sullivan v. Mississippi & Missouri R.R. Co., 11 Iowa 421 (1860).

> Where different persons are employed by the same principle in a common enterprise, no action can be brought by them against their employer on account of injuries sustained by one employee through the negligence of another.[1]

The language used by the Supreme Court of Iowa was broad enough to include all persons employed by the same master in the prosecution of the same general business. The Supreme Court of Iowa through the years, however, had somewhat mitigated the harshness of the rule of common employment. The most important qualification is the doctrine that the master cannot so delegate certain of his duties as to escape liability for the non-performance or mal-performance of them.[2] The Court has variously stated that the master cannot delegate the duties to furnish a safe place to work,[3] to provide safe tools and appliances,[4] to hire competent servants,[5] to warn servants of latent dangers[6] and to exercise proper control and supervision over the work[7] in order to relieve himself of liability.

In applying the doctrine of common employment, the Supreme Court of Iowa has explicity held that the fact that two servants

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[1] Ibid., p. 423.

[2] Fink v. Des Moines Ice Co., 84 Iowa 321, 51 N.W. 155 (1892).

[3] Winslow v. Commercial Building Co., 147 Iowa 238, 124 N.W. 320 (1910).

[4] Beresford v. American Coal Co., 124 Iowa 34, 98 N.W. 902 (1904).

[5] Ibid., p. 40.

[6] Hendrickson v. U. S. Gypsum Co., 133 Iowa 89, 110 N.W. 322 (1907).

[7] Beresford v. American Coal Co., 124 Iowa at 40, 98 N.W. 902 (1904).

are engaged in different branches of the common service can make no difference in their rights as against their employer, so long as both are employed in the same general business under one master.[1] Thus, for example, a machinist engaged in installing a counter-shaft and the operator of a bolt machine were still considered as fellow-servants, notwithstanding the fact that these two were under the direction of different foremen.[2]

Several reasons have been given for the existence of the fellow-servant rule. Most of these were put forward by Chief Justice Shaw in 1842 and include: (1) that the employee has the means of knowing and of guarding against the negligence of his fellow workers; (2) that the risk of injury by the negligence of co-employees is among those "ordinary risks" of employment which are "impliedly assumed" by the servant in his contract of service; (3) that the rule makes employees watchful of each other's conduct, and so is a better security against carelessness or incompetence than any liability of the master would be; and (4) that if employees were allowed to maintain actions for injuries caused by the negligence of fellow employees, employers would be heavily burdened and investment of capital in industrial enterprises would be curtailed to the detriment of the public.[3] These reasons were accepted by the various courts, including the Supreme Court of Iowa, which perpetuated the

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[1]Pyne v. Chicago, Burlington & Quincy Ry. Co., 54 Iowa 223, 6 N.W. 281 (1880).

[2]Kimmerle v. Dubuque Altar Manufacturing Co., 154 Iowa 42, 134 N.W. 434 (1912).

[3]Farwell v. Boston & Worchester R.R. Corp., 4 Metcalf 49 (1842).

doctrine of common employment.

Contributory negligence. The rule under the common law doctrine of contributory negligence was that no one could hold another liable in damages for an injury to which his own want of ordinary care in any degree proximately contributed.[1] It did not matter that the fault of an injured workman may have been slight and that of the master gross by comparison. Any negligence on the part of the person injured, which actually contributed to produce the injury and without which the accident would not have occurred, served to defeat recovery of damages.[2] Proof that a work injury was attributable to the fault of the employer was of no avail, then, unless the plaintiff in the action could also establish his freedom from contributory negligence.

As applied in employers' liability cases, the doctrine of contributory negligence presented two aspects. The first was that an employee was guilty of contributory negligence by continuing to work under conditions of such imminent hazard "as a reasonably prudent man would refuse to encounter."[3] In this sense, the Iowa common law of contributory negligence was merged with that of assumption of risk as discussed earlier.

The second aspect of contributory negligence as applied in

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[1]Haley v. Chicago & Northwestern Ry. Co., 21 Iowa 15 (1866).

[2]Cooper v. Oelwein, 145 Iowa 181, 123 N.W. 955 (1909).

[3]Greenleaf v. Dubuque and Sioux City R.R. Co., 33 Iowa 52 (1871).

employers' liability cases was that a servant could not recover for an injury to which the absence of his own care at the time of the accident contributed as a cause of that accident. The care expected of an employee was that defined as "reasonable" or "ordinary," though what conduct was reasonable depended upon the particular circumstances surrounding the case.[1]

Contributory negligence was not predictable unless the employee was, or ought to have been aware of the conditions which produced his injury, and appreciated the dangers created by those conditions.[2] Knowledge of a dangerous condition was, however, imputed to the injured employee if he could have discovered the condition by the exercise of ordinary care. Typical instances of conduct which had been held to present such an inference were failure to look for possible dangers[3] and going into a dangerous place without notifying persons from whose acts danger may reasonably be anticipated.[4]

Violation of a law was negligence per se, and where such a violation by an injured party contributed to an injury, the worker was barred from recovery. If the violation of law was coincidental, and not the proximate cause of the injury, there was no bar to recovery.[5]

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[1]Baird v. Chicago, Rock Island and Pacific Ry. Co., 61 Iowa 359, 13 N.W. 731 (1883).

[2]Greenleaf v. Dubuque & Sioux City R.R. Co., 33 Iowa 52 (1871).

[3]Magee v. Chicago & Northwestern Ry. Co., 82 Iowa 249, 48 N.W. 92 (1891).

[4]Thoman v. Chicago & Northwestern Ry. Co., 92 Iowa 196, 60 N.W. 612 (1894).

[5]Taylor v. Star Coal Co., 110 Iowa 40, 81 N.W. 249 (1899).

Contributory negligence was not a defense of the employer; freedom from such negligence had to be pleaded and proven by the employee to justify recovery.[1] However, it was not always necessary to prove the absence of contributory negligence by direct and positive testimony.

A summary of the law as it stood in Iowa in the first decade of the twentieth century is now in order: A workman who had been injured in the course of an ordinary employment could recover damages by showing that his injury was caused by the employer's failure to exercise ordinary care for his safety. Also, the worker had to show that he had not in any degree contributed to the injury. Conversely, a workman could not recover if his injury was due to an ordinary hazard of the employment, or to the negligence of a fellow-servant. Nor could an injured worker recover if his injury was due to a defect, although produced by his employer's negligence, which it was the employee's duty to repair or which was so manifestly and imminently dangerous that a reasonably prudent person would not have continued in the work.

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[1]Baird v. Morford, 29 Iowa 531 (1870).

CHAPTER III

EARLY WORKMEN'S COMPENSATION LEGISLATION

Workmen's compensation legislation had long been established in European countries and in the British Colonies before it developed in the United States. These early laws differed in scope and method but they were all based on the same principle of providing compensation for injury regardless of fault. They were the result of the development of modern industry and ideas and were coupled to a growing dissatisfaction with the system of employers' liability. While many of these early laws were frequently restricted in scope, Germany and Great Britain had already developed workmen's compensation legislation by the turn of the twentieth century.

A knowledge of the development of workmen's compensation in these two countries is helpful since the idea originated in Germany and because the institutions and industrial development of Great Britain closely resembled those of the United States.

Germany

The development of workmen's compensation legislation throughout the world can be traced from the German law of 1884.[1] However, Germany passed through a period of preparatory liability legislation

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[1]Earl F. Cheit and Margaret S. Gordon (eds.), Occupational Disability and Public Policy (New York: John Wiley & Sons, 1963), p. 191.

before adopting workmen's compensation.

In Germany, as elsewhere before the adoption of workmen's compensation legislation, the worker who was injured in the course of his employment could secure redress only by suing his employer. In the vast majority of cases the employer was able to defend himself against the allegation of fault, and very few cases were won by injured workers or their survivors under the common law of employers' liability.[1]

Early Prussian laws recognized the obligation of the master to care for his servant during disability. This obligation was implied in the labor contract and the master could be compelled to pay for medical attention to his servant. The employer was also held responsible for accidents to servants in his employment due to his negligence, and was bound to care for the injured until recovery. This restriction, however, gave rise to litigation, much of it being adverse to the injured workman.[2]

The first Prussian statute requiring the payment of indemnity for industrial accidents was enacted November 3, 1838. This statute made railroad companies liable for accidents to employees and to passengers. The railroad companies could escape liability only by proving that the accident had occurred through the negligence of the person injured or killed or through an "Act of God."[3]

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[1] Ibid., p. 192.

[2] Ralph H. Blanchard, Liability and Compensation Insurance (New York: D. Appleton & Co., 1917), p. 82.

[3] Ibid., p. 83.

Laws were passed in 1845, 1849 and 1854 to encourage the formation of organizations of workingmen for the purpose of accident and sickness relief. The last of these required that workers should join trade guilds to which employers were compelled to contribute one-half of the management cost. In the 1860's and 1870's, many of the local governments throughout the country enacted laws to require specified workers within their geographic areas to pay regular contributions to the communal treasury from which was paid sickness and accident relief.[1]

The Liability Act of 1871. After the establishment of the German Empire in 1870, the Imperial Government became engaged in the problem of industrial accidents. The liability act was passed in 1871 and extended the railroad act of 1838 over the empire. This act made the employer liable for accidents occurring in a mine, quarry, pit, or factory, if the injured workman or his survivors could prove negligence under the common law on the part of a vice-principal.[2]

Experience under the liability act was unsatisfactory because the burden of proving the employer's negligence was still on the employee. The law did not affect accidents due to the negligence of a fellow-employee nor those due to the inherent risk of the employment. Frequent lawsuits did much to embitter the relations of employers and

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[1]U. S. Department of Labor, Workmen's Insurance and Compensation Systems in Europe: Twenty Fourth Annual Report of the Commissioner of Labor, 1909, Vol. I, (Washington: Government Printing Office, 1911), p. 978.

[2]Cheit and Gordon, op. cit., p. 193.

employees.[1]

There was growing dissatisfaction under the liability act and a movement for compulsory compensation gained headway. The Socialists were the first to urge a plan for compulsory compensation. Bismark, the first chancellor of the German Empires had originally opposed the idea but finally adopted it. Because of the increasing number of socialistic votes in the Reichstag, Bismark hoped, by advocating a compensation plan, to take from the Socialists some of their ammunition and to convince the people of the beneficence of the State as it then existed.[2]

The first bill for compulsory compensation was introduced in the Reichstag in 1881 and provided for compulsory insurance against economic loss from industrial accidents in mines, factories and other industrial establishments. Under this proposal, insurance was to be carried in a federal insurance corporation or in mutual associations of employers. Its cost was to be defrayed by contributions of employers and employees and by a subsidy from the state. This bill was subsequently withdrawn after attempts were made to change it.

Emperor William I of Germany on November 17, 1881, sent his famous message to the Reichstag urging a comprehensive scheme of social insurance. This was the first and one of the most liberal of official pronouncements on the subject of social insurance and said in part:

> We consider it Our Imperial duty to impress upon the Reichstag the necessity of furthering the welfare of the working people. We should review with increased satisfaction the manifold successes with which the Lord has blessed our reign, could we carry with Us to the grave the consciousness of leaving Our country an additional and lasting

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[1] Ibid.

[2] Blanchard, op. cit., p. 84.

> assurance of internal peace, and the conviction that We have rendered the needy the assistance to which they are justly entitled. Our efforts in this direction are certain of the approval of all the Federate Governments, and We confidently rely on the support of the Reichstag, without distinction of parties. In order to realize these views, a Bill for the Insurance of Workmen against Industrial Accidents will first of all be laid before you; after which a supplementary measure will be submitted, providing for a general organization of industrial Sick Relief Insurance. Likewise, those who are disabled in consequence of Old Age or Invalidity posess a well-founded claim to more ample relief on the part of the State than they have hitherto enjoyed. To devise the fittest ways and means for making such provisions, however difficult, is one of the highest obligations of every community, based on the moral principles of Christianity. A more intimate acquaintance with the actual capabilities of the people, and a mode of turning these to account in corporate associations, under the patronage and with the aid of the State, will, We trust, develop a scheme to solve which the State alone would prove unequal.[1]

The Law of 1884. A bill providing for workmen's compensation was passed by the Reichstag in 1884, taking effect on October 1, 1885. The general principles embodied in this law are the foundations of workmen's compensation in Germany and may be regarded as the parent of all such legislation in other countries.[2]

The law of 1884 provided for a system of public accident insurance which would afford compensation for all accidents occurring in industrial establishments without regard to whether they were attributable to the negligence of the employer or of the injured workman, or to risks inherent to the employment. This law applied to industrial accidents occurring during the course of employment, unless the injured had caused the accident intentionally. Occupational diseases were not brought within the scope of the law which was inter-

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[1] Ibid., pp. 85-86. [2] Ibid., p. 86.

preted as applying only to accidents in some way casually related with the worker's employment. In general, this meant accidents occurring on the employer's premises and during customary working hours.

Originally, the German law provided for two types of benefits: (1) medical benefits and (2) cash benefits designed to provide compensation for wage loss. After a three day waiting period during which no compensation was paid, the victim of an industrial accident was entitled to receive cash benefits amounting to fifty percent of his wage loss during the first four weeks following the accident and sixty-six and two-thirds percent thereafter during a period of temporary disability through the thirteenth week. Payments beyond the thirteenth week were at the same rate, paid from the accident association fund.[1] Lump sum settlements were permitted for minor disabilities.

For victims of permanent disability, the German law provided for a pension throughout the continuance of disablement. In fatal cases, the German system provided for a modest lump sum funeral benefit and for pensions for widows and children. It also provided for pensions for other surviving relatives if they had been dependent upon the deceased. However, the total pensions paid to survivors could not exceed sixty percent of the deceased's wage.[2]

The right to free medical treatment was a feature of the German accident insurance system from the beginning. Victims of industrial accidents were entitled to free medical and surgical attendance,

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[1]James E. Rhodes, II, Workmen's Compensation (New York: Macmillan Co., 1917), p. 52.

[2]Ibid., p. 53.

drugs and therapeutical appliances furnished during the first thirteen weeks by the sickness fund. After the first thirteen weeks, medical expenses were paid from the accident fund.[1]

Following Germany's first attempt in 1884 to provide for accident relief, the fundamental idea of workmen's compensation spread to other countries. By 1887, Austria had also developed a workmen's compensation law. Before the turn of the Twentieth Century, Norway, Finland, Great Britain, Denmark, Italy and France had followed suit. Such divergent countries as New Zealand, Greece, Russia, Venezuela and Transvaal had enacted workmen's compensation laws before 1910.[2]

Great Britain

Recovery of indemnity for injuries suffered in industry in Great Britain was governed by the common law of employer's liability. This law went to extreme lengths in the protection of the employer in that it was practically impossible for a worker to secure damages. The employer's defenses of assumption of risk, common employment and contributory negligence were given such a weight so that it was possible for an employer to escape all liability. By the 1870's, the workmen of England were united in opposition to the common law doctrines governing recovery of damages arising out of industrial accidents. As far as the workmen were concerned, the common law discriminated against them by putting them in a worse position vis-a-vis

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[1] Ibid.

[2] Blanchard, op. cit., p. 80.

their employers than any stranger.

In 1877 a Select Committee of the House of Commons was appointed,

> To inquire whether it may be expedient to render masters liable for injuries occasioned to their servants by the negligent acts of certified managers of collieries, managers, foremen, and others to whom the general control and superintendence of workshops and works is committed, and whether the term 'Common Employment' could be defined by Legislative Enactment more clearly than it is by the law as it at present stands.[1]

Employers's Liability Act of 1880. A storm of controversy and a long investigation followed. A bill was finally introduced in Parliament and the Employers' Liability Act was passed in 1880. This was the first legislative protest against the favoritism of the common law and was intended to be a temporary compromise measure. The Act modified the doctrines of common employment and of assumption of risk, but left untouched the doctrine of contributory negligence.[2]

The Act provided that a worker, or in case the injury resulted in death, the legal representative of the worker, have the same right of compensation and remedies against the employer as if the worker had not been an employee of, nor in the service of the employer, nor engaged in his work.[3] In effect, the Act curtailed the defense of common employment in cases where the worker suffered injury due to the negligence of a supervising employee.

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[1]David G. Hanes, The First British Workmen's Compensation Act (New Haven: Yale University Press, 1968), p. 15.

[2]Blanchard, op. cit., p. 88.

[3]Hanes, op. cit., p. 20.

While the Employer's Liability Act of 1880 extended the employer's legal liability that had been imposed by common law, it placed limits on the amount recoverable under its provisions. The amount of damages recoverable was limited to three years' wages of a person in a similar grade and place of employment.[1]

The practice of "contracting out," whereby a worker could contract with his employer for a consideration not to claim compensation for personal injuries under the Employers' Liability Act, was permitted. The usual consideration was a contribution by the employer to the worker's insurance fund.[2]

The Act of 1880 was a step forward in the theory of the relation of employer and employee regarding compensation for injuries but proved to be ineffectual. The practice of requiring workers to sign a contract relieving the employer of liability became general and actions brought under the Act were usually unsuccessful.

> That Act . . . cannot be said to have been successful. The proof of negligence has been found extremely difficult, and in vast proportion of the cases of accident no negligence of the nature required by the Act in fact existed, or in all events could be proved; and even if there were prima facie evidence of negligence, the risks of litigation were most serious both for employer and employed . . . . Regarded, therefore, as a means of obtaining compensation for injury by accident with a reasonable degree of certainty, the Employers' Liability Act of 1880 must be considered to have been a failure.[3]

The Employers' Liability Act expired in 1887 but was extended by Parliament on an annual basis. Between 1880 and 1897 Parliament

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[1] Ibid., p. 22. [2] Ibid., p. 24.

[3] Blanchard, op. cit., p. 89.

passed no further legislation dealing with the plight of the injured worker although bills on the subject were introduced almost every year.

Workmen's Compensation Act of 1897. Finally, on August 6, 1897, the Workmen's Compensation Act came into being.[1] This was the first such law in an English-speaking country.

The Workmens' Compensation Act was limited in its application to employment in, or about, a railway, factory, mine, quarry, engineering work or building work exceeding thirty feet in height. The employer was required to pay compensation for all accidents except those due to the "serious and willful misconduct" of the employee and those which did not cause over two weeks' disability. The employee could recover under the law of negligence only if he could prove personal and willful neglect of the part of the employer.[2]

Benefits paid in the event of death to the victim's dependents were three years' wages, but not less than one hundred and fifty pounds nor more than three hundred pounds. Those partially dependent upon the deceased received a payment according to the degree of their dependency, not to exceed three years' wages nor three hundred pounds. If there were no dependents, reasonable burial expenses, not to exceed ten pounds, were provided. It was required that payment of death benefits be made in lump sums which might be invested by an arbitrator to prevent squandering.[3]

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[1]Hanes, op. cit., p. 104.

[2]Blanchard, op. cit., p. 90.

[3]Ibid., p. 91.

The Act made no legal distinction between temporary and permanent disability benefits. Compensation for disability was paid at a rate of fifty percent of the injured's wages after the second week, but not exceeding one pound. Benefits were to be paid weekly. But, if a worker had received weekly payments for not less than six months and was still incapacitated, the employer could apply to have the weekly payments commuted for a lump sum settlement which the worker was obligated to accept. Lump-sum settlements could also be made earlier by agreement between the employer and employee.[1] Partially disabled workers received reduced benefits which varied in accordance with the loss of earning capacity.

The Workmen's Compensation Act declared employers liable for industrial injuries to their employees but did not require them to carry insurance. Disputes arising regarding the payment of compensation was to be settled by a committee representing both parties or by an arbitrator selected by the two parties. If no agreement were reached by one of these methods, the judge of the county court or his appointee was to act as an arbitrator. Appeal could be made from a decision only on questions of law.[2]

The Act of 1897 was regarded as something of an experiment subject to extension and correction in the future. In 1900 its provisions were extended to cover agricultural employment. In 1906 the original act was amended to extend the principle of workmen's compensation to every employment. In addition, trade or occupational diseases

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[1]Cheit and Gordon, op. cit., p. 204.

[2]Ibid., pp. 202-203.

were included under the compensation benefits. The waiting period was reduced to one week instead of the original two and compensation was to be paid from the date of the accident if the liability extended beyond two weeks. The defense of "serious and willful misconduct" was removed where the accident resulted in death or in serious and permanent disablement. The 1906 provisions also extended the privilege of compensation to a greater number of dependent relatives.[1]

United States

The period from 1890 to 1911 was a period of investigation and experimentation in the United States. The unsatisfactory experience under employer's liability aroused public opinion in favor of the principle of compensation for injured workmen. Many reports of state investigating commissions, the proceedings of various conferences and the publications of several societies interested in the study of workmen's compensation were generated. During this period individual states attempted to apply the principle of compensation that had developed in Europe but no permanent legislation was enacted by any state. The experience acquired during the early stages of development emphasized the need for making the compensation principle compulsory on both employer and employee and of overcoming constitutional objections.

The first workmen's compensation bill actually introduced in the United States was in the New York Legislature in 1898. This bill was modelled to a considerable extent on the British Workmen's Compen-

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[1]Blanchard, op. cit., p. 93.

sation Act of 1897. This bill, however, never reached discussion because its proponents were convinced that, because of misunderstanding, there was little chance that the legislation would receive sufficient support for adoption.[1]

The first state act, 1902. The first legislation in the United States embodying the compensation principle was passed in Maryland in 1902 and provided for a cooperative accident insurance fund. The statute applied only to mining, quarrying, steam and street railway service and to municipal operations in connection with sewers, excavations or physical structures.[2] Under this law, the liability of the employer was extended to cover the negligence of a fellow-servant, and provided that one-half damages were to be forfeited if contributory negligence could be proved. An employer was exempted from all liability for accidents on the payment of a premium into an insurance fund administered by the insurance commissioner. Employers were permitted to deduct one-half of these premiums from the wages of his employees. Exemption of payment of these premiums was allowed if the employer showed to the satisfaction of the insurance commissioner that he had in operation a plan more advantageous to the employees than that proposed by the act. The insurance commissioner was given complete administrative authority with no right of appeal to the courts.[3]

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[1]Rhodes, op. cit., p. 89.

[2]Maryland, Laws of Maryland, Ch. 837, (1902).

[3]Ibid.

The law remained in force a little less than two years, being declared contrary to the Maryland Constitution in the case of Franklin v. United Railways and Electric Co.[1] The Court of Common Pleas of Baltimore in 1904 ruled on the grounds that the law vested judicial powers in the insurance commissioner, deprived workmen of a right enforceable in the courts, and denied the right of trial by jury.

The Federal Act, 1908. While the states were investigating the subject of workmen's compensation, the plight of employees of the Federal government was attracting attention. Federal employees were without redress even under the common law because of the theory that a sovereign government could not be sued without its consent. President Roosevelt recognized the injustice of the situation and made reference to it in his message to Congress on January 31, 1908, in the following terms:

> I also very urgently advise that a comprehensive act be passed providing for compensation by the government to all employees injured in government service. Under the present law an injured workman in the employment of the government has no remedy and the entire burden of the accident falls on the helpless man, his wife, and his young children. This is an outrage. It is a matter of humiliation to the nation that there should not be in our statute books provisions to meet and partially to atone for cruel misfortune when it comes upon a man through no fault of his own while faithfully serving the public. In no other prominent industrial country in the world could such gross injustice occur; for almost all the civilized nations have enacted legislation embodying the principle which places the entire trade risk for industrial accidents (excluding of course, accidents due to willful misconduct by the employee) on the industry as represented by the employer, which in this case is the government . . . .
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> The same broad principle which should apply to the government should also be made applicable to all private

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[1] Franklin v. United Railways & Electric Co., Court of Common Pleas of Baltimore (April 27, 1904).

> employers. Where the nation has the power it should enact laws to this effect. Where the states alone have the power they should enact the laws.[1]

Acting upon the President's recommendation, Congress, in 1908, enacted a workmen's compensation law providing coverage for injured employees of the government. Included under its provisions were laborers in manufacturing establishments, arsenals or navy yards, on construction of river and harbor or fortification work and hazardous employments in the reclamation of arid lands or under the Isthmian Canal Commission. The law provided for the payment of full wages to injured employees in cases where the injury was not due to the negligence or misconduct of the employee. The law applied to those disabilities lasting more than fifteen days up to a period of one year after the injury. In fatal cases the law specified certain dependents to whom the payments should be made during one year from the date of the death.[2]

The Federal act of 1908 was inadequate but was the first real compensation law to be enacted in the United States. The endorsement of workmen's compensation by the Federal government had considerable influence on the movement. This was especially true in view of the distinct recommendations made by the President that the principle which was made to apply to Federal employees should also be made applicable by action of the individual states.

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[1]U. S., Congressional Record, 60th Cong., 1st Sess. (1908), XLII, 1347.

[2]35 Stat. 65, 45 U.S.C. 51 (1908).

Subsequent state acts. Massachusetts, in 1908, adopted an act providing for some relief from industrial injuries. The act provided no definite plan of compensation but authorized the establishment of voluntary private compensation plans.[1] Nothing came of this attempt to substitute a plan of workmen's compensation for employers' liability because neither employees nor employers showed sufficient interest in the legislation to take the trouble to propose workmen's compensation systems.

In 1909 Montana adopted a compulsory compensation law to take effect on October 1, 1910. This law applied only to the coal mining industry.[2] It was declared unconstitutional in 1911 since it allowed workmen to sue under the common law, thereby imposing a double liability on the employer.[3]

Maryland adopted a statute similar to Montana's in 1910 that applied to coal and clay miners in two counties. Payments were specified for both fatal and nonfatal injuries. The acceptance of benefits constituted a waiver of the rights of the dependents or of the injured at common law.[4] This law was optional, however, and of no practical effect.

The legislation to this point in the history of workmen's

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[1]Massachusetts, Laws of Massachusetts, Chapter 489, Sec. 1, (1908).

[2]Montana, Laws of Montana, Ch. 67, (1909).

[3]Cunningham v. Northwestern Improvement Co., 44 Mont. 180 (1911).

[4]Maryland, Laws of Maryland, Ch. 837, (1910).

compensation in the United States was limited in its application to employees in selected employments. Workmen's compensation as a voluntary arrangement between employer and employee proved unworkable. The benefits provided in the early laws were for the most part inadequate. However, during this period a number of other states were developing more adequate and substantial legislation.

The New York Legislature enacted two workmen's compensation laws in 1910. One of these was a compulsory law applying to certain specified hazardous occupations. This law contained the feature of earlier laws which permitted an employee to elect to sue under employers' liability or to accept compensation under the statute.[1] The second law provided for voluntary agreements between employer and employee in industries not covered by the compulsory law.[2] Benefits were the same in both laws.

Neither of the New York laws were successful. The voluntary law was rendered ineffective by the same lack of interest shown by both employer and employee as in other states having similar provisions. The compulsory law was declared unconstitutional by the New York Court of Appeals shortly after its adoption in the case of Ives v. South Buffalo Railway Co.[3] The unanimous decision of the court was that the law, by forcing the employer to pay workmen's compensation even in those cases where he was without fault and where the

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[1]New York, Laws of New York, Ch. 352, (1910).

[2]Ibid., Ch. 674.

[3]Ives v. South Buffalo Ry. Co., 201 New York 271, 94 N.E. 431 (1911).

injury arose out of a danger inherent in and inseparable from the particular employment, was in violation of the New York State constitution provision that no person shall be deprived of life, liberty or property without due process of law. The court also intimated that the law was in violation of the Fourteenth Amendment of the Constitution of the United States.[1]

This decision was severely criticized on the grounds that the court had been unnecessarily strict in its interpretation of the State constitution and that the Supreme Court of the United States would have followed a more liberal interpretation had the question come before it for a determination. The question of the constitutionality of a compulsory statute next came up in the state of Washington the same year as the Ives decision. The Washington Supreme Court went out of its way to deliberately repudiate the opinion of the New York court and upheld the statute, declaring it valid under both the Washington and United States Constitutions.[2]

The Ives decision was important in that it indicated two possible courses of procedure to follow in legislating on workmen's compensation. One was the possibility of amending state constitutions to permit such legislation. The other was to enact a law, which although elective or voluntary in form, would in effect be compulsory.

The latter course was first followed in 1911 by New Jersey.

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[1] Ibid.

[2] State ex. rel. Davis -- Smith Co. v. Clausen, State Auditor, 65 Wash. 156 (1911).

There, a law was enacted providing for workmen's compensation coverage following the general plan of the British Workmen's Compensation Act. It also provided an alternative system in the form of a modification of employers' liability. Therefore, two possible courses of action were available to employer and employee. But, as a practical matter this was not the case. Although the election of systems was voluntary there were certain conditions which had the practical effect of forcing a decision in favor of the workmen's compensation provision. Specifically, the employer who rejected workmen's compensation was deprived of his common law defenses in suits for damages under employers' liability. Thus, it was practically certain that each case would go against him. Also, the worker who refused to accept workmen's compensation after the employer had accepted, was left under employers' liability with the employer being allowed to use the common law defense. This made it extremely difficult for such an employee to secure benefits for his injury.[1] The New Jersey law was held to be constitutional in 1913,[2] thereby making workmen's compensation appear to be an inevitability.

The shadow of unconstitutionality, however, hung over the workmen's compensation movement until 1917. Three separate decisions handed down by the United States Supreme Court in 1917 affirmed the constitutionality of each of the three prevailing types of laws: New York's 1913 compulsory law,[3] Iowa's elective law of that same

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[1]New Jersey, Laws of New Jersey, Ch. 95, (1911).

[2]Sexton v. Newark District Telegraph Co., 84 N. J. 85 (1913).

[3]N. Y. Central R. R. Co. v. White, 243 U. S. 188 (1917).

year[1] and the Washington law which included an exclusive state insurance fund.[2] No state workmen's compensation law, either compulsory or elective, has been declared unconstitutional since 1911.

Even after the threat of having workmen's compensation laws declared unconstitutional had disappeared, the states hesitated to pass such laws. Further legislation was often postponed until employers became convinced of the reality and necessity of workmen's compensation. But, along with the development in legislation grew a corresponding public sentiment favoring such laws so that, one by one, other states began to adopt workmen's compensation statutes. The big surge in compensation legislation occurred between 1911 and 1920. In this brief period all but six states passed workmen's compensation acts.[3] Today in each of the fifty states, the District of Columbia and Puerto Rico, workmen's compensation is the major economic security program for occupational disability.

It is deemed appropriate, in retrospect, to examine some of the factors which contributed to the passage of compensation legislation in the United States during the early part of this century. While work has always been dangerous, the mechanization of industry increased the hazards of labor beyond all previous experience. To the physical hazards of mechanized production were added, expecially toward the end of the nineteenth century, two other factors: The impersonal corporate

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[1]Hawkins v. Bleakley, 243 U. S. 210 (1917).

[2]Mountain Timber Co. v. Washington, 243 U. S. 219 (1917).

[3]Arkansas, Florida, Mississippi, Missouri, North Carolina, and South Carolina.

organization of industry and a plethora of cheap labor resulting from heavy immigration.

Prior to 1900, the owner of a plant usually operated it, was regularly in the plant and generally felt a sense of responsibility toward his employees. The "trust" movement introduced the absentee owner, with resulting decline in sense of responsibility. Processes were speeded up, greater energy was used to operate heavier machines and operations became steadily more dangerous.[1] It was said of many plants that they were "slaughterhouses"[2] for employees.

At about the same time, the steady stream of penniless immigrants, frequently helpless and willing to work under any conditions, contributed to the debasement of the price of human life.[3] The over-all total of physical, psychological, financial and social costs of work injuries to workers and their families, to industry and to society as a whole was becoming apparent.

The peak in industrial accident rates was reached during the first decade of the twentieth century. In the year ending June 30, 1907, four thousand five hundred and thirty-four workers were killed in railroading alone, for an average of more than twelve lives lost per day.[4] The coal mining industry also registered its worst year

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[1]Herman Miles Somers and Anne Ramsay Somers, Workmen's Compensation (New York: John Wiley & Sons, 1954), pp. 7-8.

[2]Arthur H. Reede, Adequacy of Workmen's Compensation (Cambridge: Harvard University Press, 1947), p. 345.

[3]Somers and Somers, op. cit., p. 8.

[4]Interstate Commerce Commission, Accident Bulletin 119 (Washington: Government Printing Office, 1951), p. 112.

for fatalities in 1907, with two thousand five hundred and thirty-four men being killed in bituminous mines alone.[1] In the same year, four hundred sixty-seven fatal work accidents occurred in Allegheny County, Pennsylvania;[2] two hundred eighty-five workers were killed in Cuyahoga County, Ohio;[3] and one thousand four hundred seventy-six men were killed on the job in New York.[4] In Iowa, the railways and mines of the state took the lives of one hundred fourteen workers and inflicted fourteen thousand, eight hundred sixty-three injuries upon employees within the decade, 1901 through 1910.[5]

Other factors which may be cited for the injuries and deaths sustained early in the twentieth century are the acceleration of industrial activity during that period, the absence of any organized safety effort, the prevalent twelve-hour workday in dangerous trades and child labor.[6]

Public opinion was aroused by writings such as the following:

> There is then, no prospect that the "carnage of peace" will be terminated, as the carnage of war may be, within the

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[1]U. S. Bureau of Mines, Injury Experience in Coal Mining, Bulletin 509 (Washington: Government Printing Office, 1952), p. 72.

[2]Crystal Eastman, Work-Accidents and the Law (New York: Survey Associates, 1916), p. 1.

[3]Ohio Employers' Liability Commission, Report of the Ohio Employers' Liability Commission, Part I (Columbus, Ohio: State of Ohio, 1911), p. 36.

[4]New York Employers' Liability Commission, First Report of the New York Employers' Liability Commission, Part I (New York: State of New York, 1910), p. 232.

[5]Iowa Bureau of Labor Statistics, Fifteenth Report of the Bureau of Labor Statistics (Des Moines, Iowa: Emory H. English, State Printer, 1912), p. 12.

[6]Somers and Somers, op. cit., p. 9.

> predictable future. An industrial community, such as Iowa, must face the patent fact that work injuries on a tremendous scale are a permanent feature of modern life. Every mechanical employment has a predictable hazard: of a thousand men who climb to dizzy heights in erecting steel structures a certain number will fall to death, and of a thousand girls who feed metal strips into stamping machines a certain number will have their fingers crushed. So regularly do such injuries occur that every machine-made commodity may be said to have a definite cost in human blood and tears--a life for so many tons of coal, a lacerated hand for so many laundered shirts.
>
> This "blood tax" of industry, as it may well be termed, can in no wise be shared or shifted. There can be no compensation for the torment of the scorched body, for the delirium of terror in the fall through endless hollow squares of steel beams down to the death-delaying construction planks of the rising skyscraper, for the thirst in the night in the hospital, for the sinking qualms of the march to the operating-table, for the perpetual ghostly consciousness of the missing limb--for these things and for the whole hideous host of things like them, following upon the half million accidents that happen to American workmen every year.[1]

Early in this century, America began to react seriously to the challenge of occupational disability. Two movements emerged almost simultaneously. The first, action to minimize occupational injuries took two forms: A safety movement dedicated to the prevention of occupational accidents and an industrial hygiene movement which concentrated on the study and control of occupational diseases. The second movement, and the topic of this study, took the form of action to develop compensation programs to improve the plight of those who were injured and their dependents, or survivors, by assuring them at least partial compensation for the wage loss suffered and for medical expenses.[2] The public, the American Association for Labor Legislation,

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[1]Ezekial H. Downey, History of Work Accident Indemnity in Iowa, ed. Benjamin F. Shambaugh (Iowa City, Iowa: State Historical Society of Iowa, 1912), pp. 4-5.

[2]Somers and Somers, op. cit., pp. 15-16.

the American Federation of Labor and the states' manufacturers associations joined forces to press the cause of safety and compensation before state legislatures.[1] The principle of workmen's compensation which developed from this movement half a century ago continues to this day.

Today, as in the past, efforts to improve workmen's compensation by lobbying or other promotional efforts fails if only one interest group attempts to promote changes. Reform may be successful only where several interest groups act in concert. The International Association of Industrial Accident Boards and Commissions, the professional organization of state workmen's compensation administrators, attempts to improve workmen's compensation by recommending standards which the states should meet in order to have an effective program.

Trade unions, by the use of their political influence, are a key factor in improving workmen's compensation. In states where labor is weak, reform of workmen's compensation is given low priority by the state legislatures.

More recently, the insurance industry also has attempted to promote changes in workmen's compensation laws. Historically, the insurance industry attempted to be "neutral" on any issue about workmen's compensation. The industry is in a difficult position because its clients are employers and it is tempted to avoid any stand which could possibly antagonize them. The attitude of the private insurance carriers, however, is changing so that they are taking a more active

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[1]John D. Hogan and Francis A. J. Ianni, American Social Legislation (New York: Harper & Brothers, 1956), p. 432.

part in promoting needed improvements in workmen's compensation.

The economic system of the United States encourages the forces of efficiency and mobility. These forces tend to drive employers to locate where the environment offers the best prospect for profit. Workmen's compensation costs are in effect a charge to the employer for doing business in a state. Each state is forced to consider carefully how it will tax its domestic enterprises because higher costs may precipitate the departure of existing employers or deter the entry of new employers.

It is the opinion of the writer that a state can have an adequate workmen's compensation program without driving employers away. Interstate differences in workmen's compensation costs for the average employer are minimal. Such costs are small compared to other differences among states, such as wage differentials or access to markets or materials. While it is felt that no state should hesitate to improve its workmen's compensation program for fear of losing employers, this does not appear to be the case. Because of the uncertainty of factual costs of workmen's compensation, state legislatures hesitate to enact improvements in the program.

Employers, therefore, should join the coalition of professional associations, the labor movement and the insurance industry to press for continuing improvements in the states. The public, again, must become aware of the needs for improvements in workmen's compensation. Workmen's compensation is not the compelling topic of the 1970's. It receives considerably less public notice than does pollution, minimum wage laws or even auto insurance. Public disinterest continues even

though millions of American workers are injured each year. The average worker is indifferent, perhaps because thinking about industrial accidents is unpleasant. It is human nature to assume that "It won't happen to me."

CHAPTER IV

DEVELOPMENT OF IOWA'S WORKMEN'S COMPENSATION LAW

The law of employers' liability existing in Iowa in 1911 imposed the pecuniary burden of work accidents mainly upon the injured workers and their families. It appeared to be excessively slow and uncertain and tended to foster antagonism rather than good will between employers and their workers. These defects were inherent in the basic principles of the law itself. The existing system which made compensation dependent upon proof that the employer was at fault caused the uncertainty, delay and bitterness incident to litigation. A modification of the common law would not reach the root of the evil so long as the fundamental principle of no liability without fault was retained. The situation, it appeared, could only be remedied by legislation.

Employers' Liability and Workmen's Compensation Commission

The Thirty-fourth General Assembly of Iowa created the Employers' Liability and Workmen's Compensation Commission.[1] The act authorized the Governor to appoint a commission of five members, consisting of two employers, two employees and one disinterested party. The commission was charged with the duty of investigating the problem of industrial accidents in Iowa and other states and to inquire into

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[1] Iowa, Laws of Iowa, p. 230, (1911).

the most efficient method of providing compensation to workers for losses suffered. The commission was to draft a bill to be presented to the Governor before the fifteenth day of September, 1912.[1]

As members of this commission the Governor appointed Senator John T. Clarkson, who became chairman, Mr. W. W. Baldwin of the Burlington Railway, Judge John L. Stevens of Boone, who represented the Manufacturers' Association, Mr. P. S. Billings, representing the railway trainmen, and Mr. John O. Staly, a coal miner. Mr. Welker Given was chosen secretary.[2]

The commission had before it the results obtained by similar bodies in other states. The original investigation comprised (1) collation of employers' accident records; (2) a study of employers' liability insurance in Iowa; (3) an analysis of indemnity laws in this country and abroad; (4) an inquiry into the actual working of recent indemnity legislation in the United States; and (5) ten public hearings for the taking of testimony from employers, employees and other interested persons.[3]

Accident records for the years 1909, 1910 and 1911 were secured from three hundred Iowa manufacturers employing eighteen thousand, four-hundred and sixteen workmen. The number of injuries reported was two thousand, three-hundred and four. Sixteen of these were fatal, two caused total disability for life and sixty-three

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[1] Ibid., p. 231.

[2] Employers' Liability and Workmen's Compensation Commission, The Report of the Employers' Liability Commission to the Governor (Des Moines: Emory H. English, State Printer, 1912), p. 1.

[3] Ibid., pp. 5-6.

entailed permanent impairment of the worker's earning capacity.[1]

The growth, extent and working of employer's liability insurance in Iowa was investigated from the published reports of the Auditor of State. The commission stated that eight hundred fourteen thousand and thirty seven dollars were paid for settlements and adjustment of employers' liability claims in Iowa in 1911. The report continued that,

> Assuming that court costs, contingent attorneys' fees, adjusters' salaries and other deductions are much the same in Iowa as in other States, the amount which reached the ultimate beneficiaries can not have greatly exceeded one-third of the sum paid out.[2]

Analysis of the leading indemnity acts of the United States and brief summaries of certain European laws were prepared by Chairman Clarkson. The commission, therefore, had before it many types of accident relief from which to obtain suggestions for its own recommendations.

Secretary Given visited New Jersey, Ohio and Illinois and reported on the operation of the acts of those states. Chairman Clarkson made personal investigations in Massachusetts, New York and Wisconsin. All members of the commission attended the National Conference of Employers' Liability and Workmens' Compensation Commissions held in Chicago in October, 1911.[3]

Public hearings were held during the month of March, 1912, at Des Moines, Council Bluffs, Sioux City, Fort Dodge, Waterloo, Dubuque, Cedar Rapids, Davenport, Burlington and Ottumwa.[4] The

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[1] Ibid., pp. 70-83. [2] Ibid., p. 101. [3] Ibid., Part II.

[4] Ibid.

hearings provided a test of public opinion and served also to stimulate interest in the legislation that was to be proposed. The chief task before the commission was, of course, the framing of a legislative measure which would provide reasonably adequate relief to workmen without unduly burdening employers.

The commission bill. The proposed bill was endorsed by four of the five members of the commission. It could best be characterized as providing an elective mutual insurance system. The commission's bill contemplated indemnity irrespective of fault, except for injuries sustained while the person was intoxicated. Relief was also to be denied for injuries caused by "the employee's wilful intention to injure himself or to wilfully injure another."[1]

The proposal applied to all employments, to the state and its subdivisions and to all private employers who employed five or more workers. Excluded under the act were employees engaged in clerical or official capacity and casuals not employed for the purpose of trade or business. The act covered all personal injuries arising out of and in the course of employment.[2]

The proposed act was compulsory upon public bodies and their employees. Every private employer was presumed to have accepted the plan of compensation unless he made affirmative rejection by serving notice to his employees and to the Industrial Commission of Iowa. An employee's acceptance of the plan was also presumed in the absence of a similar affirmative rejection.

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[1] Ibid., p. 19. [2] Ibid., p. 21.

If the employer rejected the act, he lost the defenses of fellow-servant, assumption of risk and contributory negligence. Such an employer would have the burden of proof to show that any injury sustained in his service was not proximately caused by his negligence. The existing common law defenses were to be retained by employers who accepted the act.[1]

The employer was required to furnish reasonable surgical, medical and hospital services and supplies for a period of four weeks after the injury. The total amount, however, was not to exceed one hundred dollars.

The expenses of the last sickness and burial were to be paid by the employer in all cases of injury resulting in death. Again, the total amount was not to exceed one hundred dollars. If the employee left no dependents, no other compensation would be paid.

A weekly pension for three hundred weeks was to be granted to persons wholly dependent upon a workman who died as a result of a work injury. This pension was to be not less than five dollars nor more than twelve dollars per week. Pensions to partial dependents were proportional to the support received from the deceased.

Temporary disability benefits were to be paid at sixty percent of the injured's wages, but not more than twelve dollars nor less than five dollars per week for three hundred weeks. Total permanent disability benefits were limited to the same amount for four hundred weeks. If the incapacity continued after the expiration of that period, a life pension was granted of not less than ten dollars nor more than twenty-

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[1]Ibid., p. 20.

five dollars per month. Fixed percentages of wages, subject to the same maximum and minimum, were to be paid for certain enumerated bodily injuries causing permanent impairment of earning capacity.

No compensation was to be paid for the first two weeks of incapacity. Neither was compensation to be paid for any injury which did not produce disability for at least two weeks.[1]

The whole burden of indemnity payments was placed upon the employer. It was expressly provided that compensation due under the act "shall not be in any way reduced by contribution from employees."[2]

Contracting out of liability under the proposed act was not permitted. No employee or beneficiary was to have the power to waive any of the provisions of the act in regard to the amount of compensation that was payable. Withholding any part of an employee's wages to provide insurance against liability under the compensation plan was made a finable offense.[3]

Every private employer with five or more workers who did not expressly reject the compensation plan became a member of the Employers' Indemnity Association. This was to be an unincorporated body which assumed for its members all liability under the act.

The Association was to be governed by a board of ten directors appointed by the Governor. The board of directors, subject to the approval of the Industrial Commission, were authorized to distribute the members into risk groups. This board would also fix premium rates for each group and make rules for the prevention of

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[1]Ibid., pp. 25-37. [2]Ibid., p. 38. [3]Ibid., p. 39.

injuries.

Ten percent of the premiums collected were to be placed in a reserve fund until the amount of one million dollars was accumulated. Until the reserve reached this amount, the risks had to be reinsured in one or more liability companies approved by the Industrial Commissioner.[1]

The proposed bill created an Industrial Commission of three members to be appointed by the Governor, with consent of the Senate, for ten years. The State Supreme Court was to submit a list of fifteen nominees to the Governor. All members were to be politically impartial.

The Industrial Commission was to be authorized to make rules for carrying out the provisions of the compensation act. The Commission was to have been empowered to subpoena witnesses, administer oaths and examine books and records pertaining to cases before it. It was also to have general supervisory powers over the Employers' Indemnity Association.[2]

The minority bill. Mr. W. W. Baldwin was unable to accept the insurance plan or the administrative machinery proposed by the majority of the commission and submitted a separate bill. Mr. Baldwin's proposal was for a compulsory compensation act limited to employers of five or more persons, and administered by the courts.

Liability, under the minority bill, was to be placed directly upon the employer. Insurance was to be permissive only. Contracting out was allowed if the employer provided a relief scheme certified

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[1] Ibid., pp. 22-24. [2] Ibid., p. 21.

by the Auditor of State as not less favorable to the workmen than the compensation act.

Indemnity, under Baldwin's proposal, was to begin on the fifteenth day after the injury. Benefits were to be at fifty percent of average wages, but not less than five dollars nor more than ten dollars, for a period of not more than four hundred weeks. Fixed compensations were provided for certain dismemberments. Death benefits varied with the number of dependents and the degree of dependency. Death benefits could not exceed fifty percent of the average earnings of the deceased for three hundred weeks nor a total of three thousand dollars. A funeral benefit of one hundred dollars was payable only where there were no dependents.[1]

The most glaring difference between Mr. Baldwin's proposal and the majority bill was that the minority bill made no provision for the determination of claims without litigation. Mr. Baldwin was not yet ready to accept the principle of liability without fault.

Forces Affecting Workmen's Compensation Legislation

Between the time the Employers' Liability and Workmen's Compensation Commission was appointed in 1911 and the passage of Iowa's Workmen's Compensation Act early in 1913, a number of forces were involved in influencing the nature of the legislation that would eventually be passed. Among these forces were the employers of the State of Iowa, organized labor and the workmen of Iowa and the state's political and government leaders.

The first issue of the journel published by the Iowa State

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[1]Ibid., pp. 48-56.

Manufacturers Association in January, 1912, reproduced the act creating the Employers' Liability Commission.[1] In describing the work of the commission, the article stated that,

> The commission appealed at once directly to the employers of Iowa for co-operation in preparing a bill for the next General Assembly that could be supported by all interests. The result has been most gratifying. The employers, especially the manufacturers, have made generous response, and in the instances where special agents have been sent out by the commission they have been greeted cordially and given every help.[2]

The stated position of the Iowa State Manufacturers Association was that ". . . the annual preventable loss through accidents in Iowa is enormous, and that it is high time the state grappled with the question in dead earnest."[3] However, as to the desirability of the commission's bringing forward a workmen's compensation bill for the Thirty-fifth General Assembly, the Manufacturers Association admonished its members to consider "whether more time should be taken for investigation."[4]

While the Employers' Liability Commission was conducting its investigation into the need for workmen's compensation in Iowa, the Iowa State Manufacturers Association was editorializing against the wisdom of bringing forth such legislation. The association stated that while the laws of Kansas, New Jersey, Wisconsin, Ohio and Washington had been declared constitutional by the supreme courts of their states, the question remained whether the laws would pass the final test before the United States Supreme Court. The association stated

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[1] "Employers' Liability Commission," Iowa Factories, I (January, 1912), 22-23.

[2] Ibid., p. 23. [3] Ibid. [4] Ibid.

that if the United States Supreme Court did declare these laws to be unconstitutional, settlements made in the interim under the supposition of constitutionality would not be binding and there would be a chaotic condition too bewildering to imagine.[1]

It was the feeling of the Manufacturers Association that "every workman wants all he can get, if he can get it legally, but how far can an employer go in providing benefits for his employee?"[2] It was also implied that workmen's compensation might discriminate against married men and older workers:

> . . . if a man is killed and leaves no kith or kin--it is provided that a small amount, one or two hundred dollars, shall be paid by the employer for funeral expenses. That's all. Wouldn't it be cheaper then to only employ mavericks? Won't this discriminate against married men? Under the acts, payments must be made while the disability of an employee lasts. Every one knows that the recuperative powers of a young man are far greater than those of an old or middle aged one, so while a young man might be disabled for two weeks, an old man might be laid up for six months. Wouldn't it be cheaper then to hire young men and keep the old fellows off the payroll? Again a discrimination against old men.[3]

In presenting its arguments against workmen's compensation, the Iowa State Manufacturers Association stated that, under the universally condemned employers' liability laws the cost to an employer for industrial accidents was inconsiderable. In fact, when liability insurance was carried by an employer, the premiums paid were rarely included in fixing the factory cost of the product, but, like contributions for charitable purposes, were charged to profit and loss accounts. The association believed that with workmen's compensation, however, the

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[1]"Workmen's Compensation," Iowa Factories, I (March, 1912), 22.

[2]Ibid. [3]Ibid.

cost would amount to an appreciable sum of money and the employer would necessarily include the expenditure in the cost of his product and make the consumer finally pay the bill.[1]

The same month the workmen's compensation bill endorsed by the majority of the Employers' Liability and Workmen's Compensation Commission was introduced in the Iowa General Assembly, January, 1913, the Iowa State Manufacturers Association was editorializing as follows:

> For upward of twelve years the workmen of Iowa have been endeavoring to have our Legislature write upon our Statute books, laws which would compensate them for injuries similar to the new plan worked out in European countries. The employers of Iowa have felt that conditions in this state have not warranted such a departure from the old, tried customs in this regard while Iowa was a new industrial state and while the rest of the world was in the throes of vast uncertainty as to the practicability of the new system. The manufacturers of Iowa are not averse to a reasonable measure of compensation for injuries as soon as one that is workable and just can be arrived at.[2]

The same sentiment, that this was not the time for the passage of a workmen's compensation act was echoed again the following month.

> The demand for workmen's compensation comes from the labor leaders; the men themselves are not so sure they want it. It would be nice to accomodate these earnest patriots and undoubtedly we shall some day. But let us not be rash. The more haste, the less speed. It is an absolute certainty that most of the sixteen states which have been plunged headlong into this thing in the dark in the past two years, will have to tear down their rash botches and build over again with their eyes open. Iowa will have a good and just law before any of them if she goes on in her good old Iowa way and looks before she leaps.
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> There is not an ounce of experience on American soil to guide us in this, but there will be plenty of it of all kinds now in a couple of years, all mixed with gnashing of teeth and the sound of things going to pieces.

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[1] "The Cost of Workmen's Compensation," Iowa Factories, I (May, 1912), 25-26.

[2] "Workmen's Compensation," Iowa Factories, II (January, 1913), 5.

> If Iowa goes it blind on this question it will be the first time in her history.[1]

The Iowa State Manufacturers Association, therefore, while favoring the basic principle of workmen's compensation, was directly opposed to adopting the principle until it had proven itself workable in other states. Organized labor in Iowa, on the other hand, wanted a system of workmen's compensation installed in the state at the earliest possible time. The Iowa Federation of Labor demanded the abrogation of the existing law in favor of the principle of workmen's compensation. Organized labor was dissatisfied with the indemnification of work accidents under the common law of employers' liability which it considered inadequate, slow, haphazard and extremely wasteful in operation.[2]

While organized labor went on record favoring a system of workmen's compensation, it appeared that workmen's compensation was not foremost in the minds of Iowa's workers. Inspectors of the Iowa Bureau of Labor Statistics, during the biennial period 1910-1911, asked individual wage earners in the plants being inspected "What specific legislation would benefit wage earners?"[3] Out of one hundred fourteen recorded replies, only four workers believed that there should be legis-

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[1]"Workmen's Compensation," Iowa Factories, II (February, 1913), 3.

[2]Iowa Federation of Labor, Official Directory of the Iowa Federation of Labor (Des Moines, Iowa: Iowa Federation of Labor, 1911), p. 201.

[3]Iowa Bureau of Labor Statistics, Fifteenth Report of the Bureau of Labor Statistics (Des Moines, Iowa: Emory H. English, State Printer, 1912), p. 282.

lation that would compensate those who meet with accidents. The most common replies then, as would probably be the case today, related to shorter hours, higher wages and a reduction in the cost of living.[1]

During the period of investigation into the principle of workmen's compensation, little documentation is available to indicate the position insurance companies took in the controversy. Perhaps the attitude of insurance companies was best stated by J. A. Eddy, Secretary of the Employers Mutual Casualty Company: That workmen's compensation is the pound of cure which follows the lack of an ounce of prevention. It is better for society as a whole, and cheaper, to prevent rather than pay for an accident.[2] In a prophetic tone, Mr. Eddy observed in 1912 that workmen's compensation "may be but the fore-runner of health, old-age, unemployment and other forms of indemnity . . ."[3]

Governor B. F. Carroll, the man who appointed the Employers' Liability and Workmen's Compensation Commission two years earlier, in his last message to a joint session of the Thirty-fifth General Assembly of Iowa on January 14, 1913, strongly recommended the enactment of a workmen's compensation act in the forthcoming months.[4]

Two days later, Governor George W. Clarke, in his inaugural

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[1] Ibid., pp. 282-290.

[2] J. A. Eddy, "A Treatise on the Principles Underlying Workmen's Compensation," Iowa Factories, I (November, 1912), 24.

[3] Ibid.

[4] Iowa General Assembly, Senate Journal, Thirty-fifth General Assembly (Des Moines, Iowa: State of Iowa, 1913), p. 60.

address, echoed the recommendation of his predecessor for the passage of a workmen's compensation act. On the subject of workmen's compensation, Governor Clarke stated that:

> . . . So far as I have been able to discover wherever the subject has had thorough and dispassionate study the same conclusion has been reached by both employer and employee, and that is that the industrial world today presents such entirely different conditions from that of, say seventy-five years ago, that the principles of law then and since for the most part applied in Iowa with reference to industrial accidents are entirely inadequate, inapplicable, unjust and wasteful to both parties. In order that we may enjoy the conveniences, comforts, even luxuries, brought to human conditions by the wonderfully rapid development of modern Industrialism there is the annual inevitable sacrifice of human life and the great army of the maimed. And this sacrifice falls upon those least able to bear it from a pecuniary standpoint. The lives of these people are along dangerous, hazardous lines and they are taking the risks for us all, bearing the burdens that a common good may be enjoyed by those who assume no risks. Justice dictates, the commonest feelings of humanity demand and the sentiment of our universal brotherhood cries out, "Bear ye one another's burdens." And so they ought to be laid upon us all as a part of the cost of production. The maimed man and his family now bears it. Often he is poor. He cannot fight his damage suit on its long, long way through the courts. All he can do is to stake a large share of a possible recovery for a lawyer and start on the journey. Whatever the result, it is a great waste both to the plaintiff and defendant, this game of chance, and to the people in the maintenance of courts. And it is all with reference to a matter about which there ought to be no litigation at all. It is simply a business matter that ought to be promptly and as fairly adjusted as the nature of the matter would permit. And that is the result proposed by a workmen's compensation act. It must be said that many great manufacturing industries and some public service corporations, recognizing these facts, have evolved plans for avoiding them which often seem just alike to employer and employe. While it is true, I think that it is almost, if not quite, the settled conviction of the business world and of political economists that there should be an adjustment of industrial accident cases through such an act as proposed, yet it is on all hands admitted to be a problem most difficult indeed of solution--difficult to reach a result just and fair to all concerned. It should not be approached in any spirit of vindictiveness. Prejudice should be dismissed. There

> should be no striving after advantage on either side. The only question is, what is fair, just and right with reference to this great problem. Our manufacturing industries are growing wonderfully and it must be remembered that they must compete with conditions in other States. If we could have conditions that would invite manufacturing capital it would be of great advantage. But material development must not be at the expense of human rights and justice. Iowa, in line with the most enlightened thought, should make the best solution possible at this time of this question.[1]

In reporting the inaugural address, the Des Moines Register and Leader stated that Governor Clarke's plea for progressive legislation was well received and applauded. "Members of the legislature and politicians generally regarded Governor Clarke's message as a strong one calculated to induce a strong programme of legislation in the thirty-fifth general assembly."[2]

Having been urged by the governor to consider a workmen's compensation bill and armed with a copy of the report of the Employers' Liability and Workmen's Compensation Commission as stipulated by the act creating the commission,[3] the members of the Thirty-fifth General Assembly of Iowa undertook the task of considering the progressive legislation which was to follow.

Iowa's Workmen's Compensation Law

The bill endorsed by the majority of the Employers' Liability and Workmen's Compensation Commission was introduced in the Iowa

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[1]Iowa General Assembly, Inaugural Address of George W. Clarke (Des Moines, Iowa: Robert Henderson, State Printer, 1913), pp. 7-9.

[2]The Register and Leader (Des Moines), January 17, 1913, p. 1, col. 2.

[3]Iowa, Laws of Iowa, p. 230, (1911).

General Assembly on January 16, 1913, by Senator John T. Clarkson, the chairman of the Commission.[1] The proposal was designated as Senate File 3 and was:

> A bill for an act relating to employers' liability for personal injury sustained by employees in line of duty, fixing compensation therefor, securing the payment thereof, providing for the appointment of a commissioner and defining his duties.[2]

This bill went through a series of amendments before it finally passed both houses of the General Assembly. It was signed into law April 18, 1913, by Governor George W. Clark.[3] The Law, as passed, espoused the principle of liability without fault recommended by the Commission. As will become apparent from the ensuing description of the law as it finally passed, some of the Commission's proposals were rejected, a number were amended and new provisions were added.

The Act was in three parts: Part one dealt with employers' liability and workmen's compensation, part two dealt with the office of the Industrial Commissioner and part three set forth the standards for compensation liability insurance.[4] Parts two and three became effective July 4, 1913. Part one, the section on liability and compensation, took effect one year later on July 1, 1914.[5] These parts are now incorporated into the Code of Iowa as Chapters Eighty-five

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[1] Iowa General Assembly, Senate Journal, Thirty-fifth General Assembly (Des Moines, Iowa: State of Iowa, 1913), p. 103.

[2] Ibid.

[3] Iowa General Assembly, Acts and Joint Resolutions of the Thirty-fifth General Assembly (Des Moines, Iowa: State of Iowa, 1913), p. 172.

[4] Ibid., Chapter 147. [5] Ibid., p. 172.

through Eighty-seven.[1]

Employers' liability and workmen's compensation. The Law was compulsory upon every employer in the state, without regard to the number of workers he employed, unless there was an affirmative rejection of the Act. Public employers were denied the right of rejection. If any private employer rejected the Act, he lost the common law defenses of assumption of risk, common employment and contributory negligence. In this instance, the employer had the burden of proof of showing that any injury sustained in his service was not proximately caused by his negligence. Specifically, the Law provided that:

> In actions by an employee against an employer for personal injury sustained arising out of and in the course of the employment where the employer has elected to reject the provisions of this act, it shall be presumed that the injury to the employe was the direct result and growing out of the negligence of the employer; and that such negligence was the proximate cause of the injury; and in such cases the burden of proof shall rest upon the employer to rebut the presumption of negligence.[2]

The Law was also made compulsory upon all employees except household or domestic servants, farm laborers or other laborers engaged in agricultural pursuits and persons whose employment was of a casual nature. However, an employee could choose to reject the Act by an affirmative notice to the Industrial Commissioner.[3]

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[1]Iowa, Code of Iowa, pp. 337-364, (1971).

[2]Iowa General Assembly, Acts and Joint Resolutions of the Thirty-fifth General Assembly (Des Moines, Iowa: State of Iowa, 1913), p. 155.

[3]Ibid., p. 156.

If both parties had accepted the Act, in other words, not rejected it, compensation was to be paid to injured employees only as provided by the Act. The employer was required to furnish reasonable surgical, medical and hospital services and supplies, not exceeding one hundred dollars, from the time of the injury until the expiration of two weeks of incapacity.[1]

Where the injury caused death, the employer was obligated to pay the reasonable expense of the employees' last sickness and burial up to a maximum of one hundred dollars. If the employee left no dependents there was to be no other compensation paid. If there were dependents, the employer was obligated to pay these dependents a weekly payment equal to fifty percent of the worker's average weekly wages for a period of three hundred weeks. These payments were to be not more than ten dollars nor less than five dollars per week. When weekly payments had been made to an injured employee before his death, the compensation paid to dependents began from the date of the death. But, in no case could payments be made for more than three hundred weeks from the date of the injury.[2]

No compensation was due an employee for an injury which did not incapacitate him for a period of at least two weeks from earning full wages. If incapacity extended beyond this two week period then compensation began on the fifteenth day after the injury.[3]

Compensation for an injury producing temporary disability was paid at a rate of fifty percent of the average weekly wages received by the employee at the time of his injury. The total weekly

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[1] Ibid., p. 159. [2] Ibid., p. 160. [3] Ibid.

payment was subject to a maximum of ten dollars and a minimum of five dollars per week. If the employee earned less than five dollars per week, his entitlement was the full amount of his wages. Compensation for temporary disability was paid during the period of such disability, but for not more than three hundred weeks.[1]

Total permanent disability qualified the worker to receive fifty percent of his average weekly wages earned at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week. If the employee earned less than five dollars per week, he was to receive the full amount of his wages. This compensation was to be paid during the period of total permanent disability up to a maximum of four hundred weeks.[2]

For a permanent, but partial, disability, compensation was allowed according to a prescribed schedule. The loss of a member of the body was compensated at a rate equal to fifty percent of the injured worker's wage for a specified number of weeks. The duration of payments lasted from a minimum of fifteen weeks for the loss of a little finger to a maximum of two hundred weeks for the loss of an arm.[3] For cases not included in the schedule the compensation was to ". . . bear such relation to the amount stated in the above schedule as the disability bears to those produced by the injuries named in the schedule."[4] Compensation payments ceased at the time of the employee's death if the death was not a result of the injury which gave rise to the compensation.

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[1] Ibid. [2] Ibid. [3] Ibid., pp. 160-161. [4] Ibid., p. 161.

In any case where the period of compensation could be determined definitely, either the employer or the employee could apply to any judge of the district court for the county in which the accident occurred for an order to commute future payments to a lump sum. The commuted amount was to be computed on the basis of the annual earnings the employee received during the year next preceding the injury. If the injured had not been employed for a full year immediately preceding the accident, the compensation was computed on the basis of the annual earnings of a worker in the same class of work. The annual earnings, for purposes of computation, were regarded as three hundred times the average daily earnings.[1]

Industrial Commissioner. Part two of the Act created the office of Industrial Commissioner. The Industrial Commissioner was to be appointed by the Governor, with the consent of the Senate, for a term of six years. The law defined the powers and duties of the Commissioner as follows:

> The commissioner may make rules and regulations not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The commissioner shall have the power to subpoena witnesses, administer oaths and to examine such books and records of the parties to a proceeding or investigation as relate to questions in dispute or under investigation. . . . The commissioner shall make biennial reports to the governor who shall transmit the same to the general assembly, in which among other things, the commissioner shall recommend such changes in the law covered by this act as it may deem necessary.[2]

If the employer and the injured employee failed to reach an agreement in regard to compensation under the act, either party could

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[1] Ibid., p. 163. [2] Ibid., p. 167.

notify the Industrial Commissioner who was to call for the formation of a committee of arbitration. The arbitration committee, consisting of three members, was to be composed of a representative of each of the parties and the Industrial Commissioner, who was to act as chairman. The arbitration committee could make any inquiries and investigations it deemed necessary. The hearings of the committee were to be in the city, town or place where the injury occurred. The decision of the committee, based upon its finding of facts and rulings of law, was to be filed with the Industrial Commissioner. Any decision of the arbitration committee was then enforceable under the provisions of the Act unless a claim for review was filed within five days.

The Industrial Commissioner was to hear any claim for review. He could then revise the decision of the Committee in whole or in part, or refer the matter back to the arbitration committee for further findings of fact. Appeal from either the arbitrators' decision or the review hearing could be made to the district court of the county in which the injury occurred.[1]

It was unlawful for the Industrial Commissioner, during his term of office, to serve on a committee of a political party or to espouse the election or appointment of any person for a political office. Neither could he contribute to any campaign fund of any political party nor to the campaign fund of any person who was a candidate for election or appointed to any political office.[2]

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[1] Ibid., p. 168. [2] Ibid., p. 169.

The governor was given the power to remove the Industrial Commissioner from his office on the grounds of inefficiency, neglect of duty or malfeasance in office. The Executive Council was given jurisdiction to hear the case and ". . . make such findings in accordance with justice and the law."[1]

Compensation liability insurance. Every employer subject to the provisions of the Act was required to insure his liability in some "corporation, association or organization approved by the state department of insurance,"[2] Every employer was given until thirty days after the effective date of the Act to exhibit, on demand of the Insurance Department, evidence of his compliance with the insurance provision.

Employers were permitted to insure their liability with insurance carriers or to form themselves into mutual insurance associations. An employer could also become self-insured upon proof to the Insurance Department and the Industrial Commissioner of his solvency and financial ability to pay the compensation and benefits as prescribed by the Act. Such self-insured status could, however, be revoked for cause by the Insurance Department and the Industrial Commissioner.[3]

Employers' liability prior to the Act. A second bill was then enacted by the Thirty-fifth General Assembly relating to injuries sustained by employees which occurred prior to the taking effect of Iowa's Workmen's Compensation Law. It stated:

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[1]Ibid., p. 170. [2]Ibid. [3]Ibid., pp. 170-172.

> That the law enacted by the thirty-fifth general assembly known as senate file No. 3, relating to employers' liability for personal injury sustained by employees in line of duty, and fixing compensation therefor, shall not apply to an injury sustained by such employee of such employer which occurs prior to the time when such act takes effect in all of its parts; but the law and procedure in force at the time such injury occurs, if before such act takes effect in all of its parts, shall be the same as though such act had not been enacted whether such action is brought before or after such act takes effect in all of its parts.[1]

For all practical purposes, then, the common law of employers' liability came to an end. The principle of liability without fault, and with it workmen's compensation, was born in Iowa on July 1, 1914.

Amendments to the Iowa Workmen's Compensation Law

The original Workmen's Compensation Law enacted by the Thirty-fifth General Assembly of Iowa has remained a living document. It has been amended often to meet the needs of the injured worker. However, the basic provisions of the law and the principle of liability without fault have continued to this day. Changes have been made principally to extend its coverage and to increase the benefits paid to workers or to their survivors for injury or illness, or death, sustained while at work.

Over the years, the amount the employer has been required to furnish for medical, surgical and hospital services has been increased from the one hundred dollar maximum stated in the original Act to a reasonable, but unlimited, amount.[2] The maximum weekly benefit

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[1] Ibid., Ch. 148.

[2] Iowa General Assembly, Acts and Joint Resolutions of the Sixtieth General Assembly (Des Moines, Iowa: State of Iowa, 1963), Ch. 87.

amount payable to any employee for any one week of disability has been increased from fifty percent of the employee's average earnings as stated in the Act of 1913 to sixty percent in 1919[1] and to sixty-six and two-thirds percent in 1951.[2] The maximum burial allowance, originally one hundred dollars, has been increased tenfold.[3] Voluntary coverage was extended to employers engaged in agriculture in 1945,[4] and nonresident employers, having workers in Iowa, became subject to the provisions of the Iowa Workmen's Compensation Law in 1951.[5]

The following amendments represent the most significant changes that have been made to the original Act.

The Second Injury Compensation Act. The Second Injury Compensation Act was passed by the Iowa General Assembly in 1945, and provided that:

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[1]Iowa General Assembly, Acts and Joint Resolutions of the Thirty-eighth General Assembly (Des Moines, Iowa: State of Iowa, 1963), Ch. 87.

[2]Iowa General Assembly, Acts and Joint Resolutions of the Fifty-fourth General Assembly (Des Moines, Iowa: State of Iowa, 1951), Ch. 59.

[3]Iowa General Assembly, Acts and Joint Resolutions of the Sixty-third General Assembly, Second Session (Des Moines, Iowa: State of Iowa, 1970), Ch. 1051.

[4]Iowa General Assembly, Acts and Joint Resolutions of the Fifty-first General Assembly (Des Moines, Iowa: State of Iowa, 1945), Ch. 76.

[5]Iowa General Assembly, Acts and Joint Resolutions of the Fifty-fourth General Assembly (Des Moines, Iowa: State of Iowa, 1951), Ch. 58.

> If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently and totally disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no pre-existing disability. In addition to such compensation, and after the expiration of the full period provided by law for the payments thereof by the employer, the employee shall be paid out of the "Second Injury Fund" created by this Act the remainder of such compensation as would be payable for permanent total disability after first deducting from such remainder the compensable value of the previously lost member or organ.[1]

The Second Injury Fund was to be created by the payment into it of one hundred dollars by the employer or his insurance carrier in each case of compensable injury causing the death of an employee. Such payments were to continue until the fund reached the sum of fifty thousand dollars. Payment into the fund was to resume again when the total was reduced below thirty thousand dollars.[2]

The Iowa Occupational Disease Law. The Iowa Occupational Disease Law, enacted in 1947, was incorporated as a part of the Workmen's Compensation Law. All employers subject to the workmen's compensation law of Iowa were brought under the provisions of the new act. The Iowa Occupational Disease Law set forth a list of sixteen specific occupational diseases along with a description of the process or occupation in which the disease must be incurred in order

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[1]Iowa General Assembly, Acts and Joint Resolutions of the Fifty-first General Assembly (Des Moines, Iowa: State of Iowa, 1945), Ch. 81.

[2]Ibid.

to be compensable.[1] Any disease not enumerated is excluded from the provisions of the act. In order to be covered by workmen's compensation, it is not only necessary that the occupational disease be one of those listed in the statute, but it must also result from employment in a specifically designated process or occupation. To be compensable, disability must result within one year after the last injurious exposure to the disease. This period is extended to three years in the case of silicosis.[2]

The General Assembly included disability due to overexposure to radiation from radioactive materials to the list of occupational diseases compensable under the Iowa Occupational Disease Law in 1959. To be compensable, disability must result within two years after the last day of injurious occupational exposure.[3]

Amendments of 1970. A major workmen's compensation bill was passed by the Sixty-third General Assembly in 1970. For the first time in five years the benefits were increased and the administrative machinery modernized.

The Act was made compulsory on both employers and employees without right of election or rejection. Uninsured employers may be

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[1]Iowa General Assembly, Acts and Joint Resolutions of the Fifty-second General Assembly (Des Moines, Iowa: State of Iowa, 1947), Ch. 71.

[2]Ibid.

[3]Iowa General Assembly, Acts and Joint Resolutions of the Fifty-eighth General Assembly (Des Moines, Iowa: State of Iowa, 1959), Ch. 105.

sued in court by an injured employee. There is a presumption that such an employer was negligent and that his negligence was the proximate cause of the injury. The common law defenses are denied to any unsecured employer.[1]

Nursing care expenses are unlimited just as are the surgical, medical and hospital expenses. The burial expense has been increased to one thousand dollars.

Death, permanent partial and permanent total weekly benefits were increased to an amount, rounded to the nearest dollar, equal to forty-six percent of the State average weekly wage as determined by the Iowa Employment Security Commission. Maximum dollar values in death, permanent partial and permanent total cases were removed.

Temporary total and healing period weekly benefits are set at fifty percent of the State average weekly wage as determined by the Employment Security Commission.[2]

A new section was added to the law providing for rehabilitation benefits of twenty dollars per week for a period of thirteen weeks. This period may be increased to twenty-six weeks by the Industrial Commissioner. Specifically, the section reads as follows:

> An employee who has sustained an injury resulting in perment partial or permanent total disability, for which compensation is payable under this chapter, and who cannot return to gainful employment because of such disability, shall upon application to and approval by the industrial commissioner be entitled to a twenty dollar weekly payment from the employer in addition to any other benefit payments, during each full

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[1] Iowa General Assembly, Acts and Joint Resolutions of the Sixty-third General Assembly, Second Session (Des Moines, Iowa: State of Iowa, 1970), Ch. 1051

[2] Ibid.

> week in which he is actively participating in a vocational rehabilitation program recognized by the state board for vocational education. . . . Such additional benefit payment shall be paid for a period not to exceed thirteen consecutive weeks except that the industrial commissioner may extend the period of payment not to exceed an additional thirteen weeks if the circumstances indicate that a continuation of training will in fact accomplish rehabilitation.[1]

As for the administrative aspects of the amendments, the Industrial Commissioner and his deputies are to be attorneys licensed to practice law in Iowa.

The Commissioner is authorized to check for insurance coverage, gather and publish statistical reports and to have a seal of office. The Industrial Commissioner is also authorized to order depositions and approve commutations, subject to appeal to the District Court.[2]

Summary of current benefits.[3] Benefits for death, permanent partial and permanent total disability are paid at a weekly rate equal to forty-six percent of the state average weekly wage as determined by the Iowa Employment Security Commission. The current benefit, effective as of July 1, 1972, is sixty-three dollars per week. During the preceeding twelve month period the benefit amount was fifty-nine dollars per week. Compensation is limited, however, to a maximum rate of sixty-six and two thirds percent of the employee's weekly earnings.

Temporary total and healing period weekly benefits are fifty percent of the State average weekly wage as determined by the Iowa Employment Security Commission. As of July 1, 1972, the benefit

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[1]Ibid. [2]Ibid.

[3]Iowa, Code of Iowa, Chs. 85-86, (1971).

amount was increased to sixty-eight dollars per week from sixty-four dollars per week. However, total weekly compensation shall not exceed sixty-six and two thirds percent of the employee's weekly wage.

The following is a schedule of the number of weeks payable for:

	Number of Weeks
Death	300
Permanent total disability	500
Loss of thumb	60
Loss of first finger	35
Loss of second finger	30
Loss of third finger	25
Loss of fourth finger	20
Loss of hand	175
Loss of arm	230
Loss of great toe	40
Loss of any other toe	15
Loss of foot	150
Loss of leg	200
Loss of eye	125
Loss of hearing in one ear	50
Loss of hearing in both ears	175
Disfigurement of face and head	150

The loss of both arms, hands, feet, legs, or eyes or any two of these parts by a single accident is considered to equal permanent total disability.

The employer is required to furnish medical, surgical, osteopathic, chiropractic, podiatrial and hospital services and supplies, services of special nurses, crutches, one set of prosthetic devices and ambulance service. The total amount of these items is unlimited. However, if the total amount exceeds seven thousand five hundred dollars, charges above this total require the approval of the Industrial Commissioner.

In the event of death and the employee leaves no widow or dependents, the only allowance is a statutory burial allowance of not over one thousand dollars and medical and hospital payments.

Rehabilitation benefits of twenty dollars per week are allowed for thirteen weeks, extendable to twenty-six weeks by the Industrial Commissioner.

The employer is also required to pay the employee for a healing period in those cases where the worker has sustained a permanent partial disability. The healing period payment shall not be more than thirty percent of the scheduled weekly compensation payable for the loss of a member of the body. The healing period may be extended up to sixty percent of the scheduled period by the Industrial Commissioner. In no case shall the healing period be more than the actual time the employee is incapacitated.

An employee who has suffered loss of use of an eye, leg, arm, hand or foot prior to a work accident which causes the loss of use of another such member may be entitled to compensation from the Second Injury Fund.

CHAPTER V

WORKMEN'S COMPENSATION BENEFITS

The benefits provided under workmen's compensation laws include periodic cash payments, lump-sum payments and medical services to the worker during a period of disability, and death and funeral benefits to the worker's survivors. They also include such special benefits as payments in cases of disfigurement and rehabilitation services.

When a worker is injured he first of all needs medical aid, and perhaps hospitalization. All the compensation laws require medical benefits to be paid, although the amount and duration of such payment varies.

There are various types of disabilities for which benefits are paid. The great majority of compensation cases involve temporary total disability. In these cases, the employee is unable to work at all while he is recovering from the injury, but he is expected to recover fully. The monetary benefits for temporary total disability are generally based upon a percentage of the worker's average wage. Injured workers, however, do not necessarily receive the amount of their wage loss that would be indicated by the percentage. Other provisions in the laws, such as the waiting period and maximum dollar limitations on weekly and total aggregate payments, operate to reduce the amount.

In cases of permanent total disability, the worker has become

permanently injured in such a manner that he is unable to work at all. Payments for such permanent total disability may be for life or the entire period of disability. Or, they may be limited to a specified period during which such benefits may be paid or to a maximum amount that may be paid, or both. In the laws that limit permanent disability benefits, no provision is made for compensating the employee after the time or money limitations have been reached even though the worker is completely disabled.

Another type of disability is designated permanent partial disability. This means that a worker has a permanent injury but is usually able to work. Permanent partial disabilities may be divided into two classes: (1) Schedule injuries, meaning the loss of an arm, leg, eye, ear or other member of the body; and (2) nonschedule injuries, which are those of a more general nature. Benefits for schedule injuries are most often payable for a fixed number of weeks, depending upon the member of the body that has been lost. For nonschedule permanent partial injuries, compensation is based upon a percentage of the disability to permanent total, or to schedule injuries.

The permanent loss to an individual of some member of his body which affects his working capacity or his future job opportunities requires not only physical but emotional adjustments. The fixed period for schedule injuries and the healing period gives the injured worker time to make such adjustments. Provision for rehabilitation in the form of vocational retraining also serve to help the injured worker make the adjustments and find suitable work before the period

of compensation ends. The rehabilitation of a handicapped worker means the restoration of the person's physical, mental, social, vocational and economic usefulness.

The purpose of death benefits is to provide income for families or other dependents of the deceased worker. The amount of compensation and the length of time it is paid varies. The payment of benefits to a widow may be for life or until remarriage, and in case of chidren until they reach majority. Death benefits may also be limited to a period during which they may be paid or to a maximum dollar amount, or both.

Five states have been selected to be examined for the adequacy of their workmen's compensation benefits. Iowa's workmen's compensation benefits are also compared with the corresponding benefit in each of these states. The five states selected are: Kansas, Michigan, Minnesota, Missouri and Ohio.

Kansas was selected because it is a rural state, as is Iowa. Also, the population of Kansas closely approximates that of Iowa.[1] Michigan and Ohio were selected for examination because they are populous[2] and because they are highly industrialized. Thirty-five percent of Michigan's and thirty-four percent of Ohio's total nonagricultural employment is in the manufacturing industries.[3] In Iowa, twenty-three percent of the total nonfarm workers are in manufac-

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[1]Iowa: 2,825,000. Kansas: 2,247,000. U. S. Bureau of the Census, Statistical Abstract, 1971, Population Table No. 11.

[2]Michigan: 8,875,000. Ohio: 10,652,000. Ibid.

[3]U. S. Department of Labor, Employment and Earnings. Volume 18 No. 7 (January, 1972), Table B-7.

turing.[1] Minnesota was included among the states to be compared because its proportion of manufacturing employees to total nonagricultural employment, twenty-three percent, is the same as Iowa's.[2] Missouri was randomly selected for examination.[3]

Workmen's compensation laws are subject to periodic legislative deliberation. The times when these laws are considered by the individual state legislatures and the effective dates of any ensuing changes in benefits vary. There is, therefore, no common date when increased workmen's compensation benefits became effective in the various states. In order to maintain comparability among the states, the following discussion is based upon benefits that were payable to injured workers on May 1, 1972.

Medical, Surgical and Hospital Services

Medical, surgical and hospital aid to an injured worker is provided for under all workmen's compensation laws. The objective of such aid is to provide full medical benefits for workers who suffer an accident. The workmen's compensation laws in the states being examined approach this objective in various ways.

The Kansas Workmen's Compensation Law requires an employer to provide the services of a physician or surgeon, and such medical, surgical and hospital treatment, including nursing, medicines, medi-

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[1] Ibid. [2] Ibid.

[3] For basis of comparison, the 1971 annual average gross earnings of production workers in manufacturing in each of the selected states are as follows. Iowa: $159.60. Kansas: $146.72. Michigan: $188.19. Minnesota: $151.28. Missouri: $141.84. Ohio: $167.28. U. S. Department of Labor, Employment and Earnings. Volume 18 No. 11 (May, 1972), Table 2.

cal and surgical supplies as may be reasonably necessary to cure and relieve an injured workman from the effects of his injury.[1] The workman must accept the treatment furnished or apply to the employer for permission to change physicians. If permission is refused, the workman may apply to the Workmen's Compensation Director. Should the workman go to an unapproved physician for treatment or examination, the employer will be liable only for expenses up to one hundred dollars. The maximum medical liability in Kansas is ten thousand five hundred dollars.[2] Iowa's maximum medical liability is unlimited, however, the permission of the Industrial Commissioner must be obtained if such expenses will exceed seven thousand five hundred dollars.

Under the provisions of Michigan's Workmen's Compensation Act an employer is required to furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of his employment, reasonable medical, surgical and hospital services and medicines or other attendance or treatment when they are needed. The employer is also required to supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus and such other appliances as may be necessary to cure, so far as reasonably possible, and relieve the effects of the injury.[3] Both the Michigan Law and the Iowa Workmen's

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[1]Kansas, Workmen's Compensation Law, Sec. 44-510(1), (1972).

[2]Ibid.

[3]Michigan, Workmen's Compensation Act, Ch. 3, Sec. 418.315, (1972).

Compensation Law place no restriction on the maximum expenditure for medical and other related services. However, unlike Iowa's law, Michigan does not establish a ceiling after which approval of the Industrial Commissioner is required before further payments may be made.

Minnesota employers are also required to provide medical, chiropractic, surgical and hospital treatment to injured workers. Christian Science treatment may be received by an injured worker in lieu of medical treatment at his election. Christian Science treatment is provided ". . . as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury."[1] Christian Science treatment to injured employees is not provided for in the laws of the other states examined. Minnesota's Workmen's Compensation Law places no limit upon the expenditures to be provided for medical, chiropractic, surgical and hospital care. The only requirement is that such expenditures be "reasonable" in terms of the charges that prevail in the community.[2]

Missouri's Workmen's Compensation Law requires the employer to provide medical, surgical and hospital treatment, including nursing, ambulance and medicines, as may reasonably be required for the first one hundred and eighty days after an injury. Medical, surgical and hospital treatment is to be provided by the employer beyond the one hundred and eightieth day upon order of the Industrial Commission if

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[1]Minnesota, Workmen's Compensation Law, Sec. 176.135(1), (1972).

[2]Ibid., Sec. 176.135(4).

it determines such services to be necessary.[1] The time limitation on medical care, extendable by the Industrial Commission of Kansas, is based upon the same principle requiring Iowa's Industrial Commissioner to authorize medical expenses beyond seven thousand five hundred dollars. Both of these provisions are intended to prevent the abuse of the unlimited medical, surgical and hospital benefits payable on behalf of an injured employee.

In Missouri, as in Iowa, Kansas, Michigan and Minnesota, employers are required to furnish an injured employee with a prosthetic device if it is needed. Missouri's Workmen's Compensation Law also permits an employee to obtain treatment for his injuries by prayer or spiritual means if the employer does not object to the treatment.[2]

The Ohio Workmen's Compensation Law provides for the payment of medical, nurse and hospital services and medicine from the State insurance fund whenever an employee is injured. Payment is also made for prostheses, braces and like appliances. Eyeglasses or dentures damaged while in place by an industrial accident will be repaired or replaced.[3] No maximum amount is set for any such payments. However, all must be approved and payment authorized by the three-man Industrial Commission.[4]

Except in Kansas, medical, surgical and hospital aid to an injured worker in the states examined is provided in full. Iowa,

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[1]Missouri, Workmen's Compensation Law, Sec. 287.140, (1972).

[2]Ibid.

[3]Ohio, Workmen's Compensation Law, Sec. 4123.66, (1972).

[4]Ibid.

Missouri and Ohio, however, provide an administrative check on these expenditures to prevent the abuse of unlimited medical payments for injuries.

Temporary Total Disability Benefits

Temporary total disability benefits in Kansas are paid at the rate of sixty percent of the worker's average weekly wage, subject to a maximum of fifty-six dollars per week for a period not to exceed four hundred and fifteen weeks.[1] In Iowa, Michigan, Minnesota, Missouri and Ohio, temporary total disability is compensable at a rate of sixty-six and two-thirds percent of the worker's wage at the time of the injury. Each state, however, places a maximum on the amount which may be received. Minimum and maximum benefits paid to injured workers for temporary total disability are summarized in Table 1. In Iowa, the maximum payment is fifty percent of the State's average weekly wage, or sixty-four dollars. In Michigan, the maximum ranges from seventy-nine dollars for a worker with no dependents to one hundred and eight dollars for one with five or more dependents.[2] The maximum payment per week for temporary total disability in Minnesota is eighty dollars[3] and in Missouri it is seventy dollars.[4] In Ohio, the maximum allowable payment is seventy-seven dollars per week. However, the first twelve weeks of total disability are pay-

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[1]Kansas, op. cit., Sec. 44-510(3)(b).

[2]Michigan, op. cit., Sec. 418.351.

[3]Minnesota, op. cit., Sec. 176.101(1).

[4]Missouri, op. cit., Sec. 287.170.

Table 1

Minimum and Maximum Benefits for Temporary Total Disability[a]

State	Maximum percentage of wages	Maximum period	Payments per week		Total maximum stated in law
			Minimum	Maximum	
Iowa.....	66 2/3.....	300 weeks.....	$18, or actual wage if less.	50% of State's average weekly wage ($64).....	None
Kansas.....	60.....	415 weeks.....	$7.....	$56.....	$23,240.00
Michigan...	66 2/3.....	Duration of disability.....	$27 to $42[b]....	$79 to $108[b]...	None
Minnesota..	66 2/3.....	350 weeks.....	$17.50.....	$80.....	None
Missouri...	66 2/3.....	400 weeks.....	$16, or actual wage if less.	$70.....	None
Ohio.....	66 2/3.....	Duration of disability.....	$35, or actual wage if less.	$84 for 1st 12 weeks; thereafter $77.....	$10,750.00

[a]As of May 1, 1972.

[b]According to number of dependents.

able up to a maximum of eighty-four dollars.[1]

Payments for temporary total disability in Michigan and in Ohio are made during the duration of the disability. Such benefits in Ohio, however, shall not exceed ten thousand, seven hundred and fifty dollars.[2] There is no limit to the total amount payable in Michigan.[3] In Iowa, the maximum compensable period is three hundred weeks; in Minnesota it is three hundred and fifty weeks[4] and in Missouri, four hundred weeks are compensable.[5] The limit on the total dollar amount that may be paid in Ohio makes the effective number of weeks payable equal to about one hundred and thirty-eight weeks. Although there is no specific dollar limit stated in the Iowa law, the statutory limit of three hundred weeks makes the effective maximum amount payable in Iowa for temporary total disability seventeen thousand, seven hundred dollars.

Those states which provide for temporary total benefits for the duration of the disability and which have no total maximum stated in the law best serve the interest of the injured worker. Of the states examined, only Michigan meets these criteria.

Permanent Total Disability Benefits

In Kansas, where permanent total disability results from an injury, weekly compensation is paid at a rate of sixty percent of

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[1]Ohio, op. cit., Sec. 4123.56.

[2]Ibid.

[3]Michigan, op. cit.

[4]Minnesota, op. cit.

[5]Missouri, op. cit., Sec. 287.170.

the employee's average weekly wage, subject to a maximum of fifty-six dollars per week. The payment of such compensation shall not extend beyond eight years, or four hundred and fifteen weeks, from the date of the injury.[1] Workmen's compensation benefits for disability of a total permanent nature in Iowa, Michigan, Minnesota, Missouri and Ohio exceed those paid in Kansas. The minimum and maximum benefits payable for permanent total disability in these states are summarized in Table 2.

Except for Kansas, the benefit amount in the states examined is computed at sixty-six and two-thirds percent of the employee's average weekly wage. Benefits for permanent total disability in Iowa are payable at fifty-nine dollars per week for five hundred weeks. In Michigan, Minnesota and Ohio benefit payments are made during the duration of the disability. The maximum compensation in Michigan ranges from seventy-nine dollars for a worker with no dependents to one hundred and eight dollars for one with five dependents.[2] In Minnesota the maximum payment per week is eighty dollars[3] and in Ohio it is seventy-seven dollars.[4] In Missouri, the first three hundred weeks are compensable at a maximum of sixty dollars; thereafter, compensation is paid for life on the basis of fifty percent of the employee's average weekly earnings, to a maxi-

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[1]Kansas, op. cit., Sec. 44-510(3)(a).

[2]Michigan, op. cit.

[3]Minnesota, op. cit., Sec. 176.101(4).

[4]Ohio, op. cit., Sec. 4123.58.

Table 2

Minimum and Maximum Benefits for Permanent Total Disability[a]

State	Maximum percentage of wages	Maximum period	Payments per week		Total maximum stated in law
			Minimum	Maximum	
Iowa.....	66 2/3.....	500 weeks.....	$18, or actual wage if less.	46% of State's average weekly wage ($59).....	None
Kansas.....	60.....	415 weeks.....	$7.....	$56.....	$23,240.00
Michigan...	66 2/3.....	Duration of disability.....	$27 to $42[b]....	$79 to $108[b]...	None
Minnesota..	66 2/3.....	Duration of disability.....	$17.50, or actual wage if less.....	$80.....	None
Missouri...	66 2/3.....	300 weeks, thereafter 50% of wages, maximum $50 for duration of disability.	$16 ($20 after 300 weeks).....	$60.....	None
Ohio.....	66 2/3.....	Life.....	$49, or average wage if less.	$77.....	None

[a]As of May 1, 1972.

[b]According to number of dependents.

mum amount of fifty dollars per week.[1]

The payment of compensation for permanent total disability for as long as such disability remains is considerably more equitable to the injured worker than established time or dollar limitations. Of the states examined, Iowa continues to impose a maximum period during which benefits are payable. Kansas has both a time and dollar limitation.

Permanent Partial Disability Benefits

Compensation for permanent partial disability in each of the states examined is governed by a schedule. The schedule of weeks payable for the loss of a body member is shown in Table 3. The number of weeks payable for scheduled losses in each state are, for the most part, comparable.

Benefits for scheduled losses in Kansas are subject to a maximum of fifty-six dollars per week[2] compared to a maximum of fifty-nine dollars per week in Iowa. The weekly rate paid for partial disability in Michigan ranges from a maximum of eighty-four dollars for an injured worker with no dependents to one hundred and thirteen dollars for one with ufive or more dependents.[3] In Minnesota, the maximum weekly payment is seventy-three dollars.[4] For permanent partial disability, Missouri's Workmen's Compensation Law

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[1]Missouri, op. cit., Sec. 287.200.

[2]Kansas, op. cit., Sec. 44-510(3)(c).

[3]Michigan, op. cit., Sec. 418.361.

[4]Minnesota, op. cit., Sec. 176.101(3).

Table 3

Schedule of Compensable Weeks for Permanent Partial Disability[a]

	Iowa	Kansas	Michigan	Minnesota	Missouri	Ohio
Loss of thumb	60	60	65	65	60	60
Loss of first finger	35	37	38	40	45	35
Loss of second finger	30	30	33	35	35	30
Loss of third finger	25	20	22	25	35	20
Loss of fourth finger	20	15	16	20	22	15
Loss of hand	175	150	215	195	175	175
Loss of arm	230	210	269	270	232	225
Loss of great toe	40	30	33	35	40	30
Loss of any other toe	15	10	11	15	14	10
Loss of foot	150	125	162	165	150	150
Loss of leg	200	200	215	220	207	200
Loss of eye	125	120	162	160	140	125
Loss of hearing in one ear	50	30	--	85	44	25
Loss of hearing in both ears	175	110	--	170	168	125

[a]As of May 1, 1972.

places a sixty-five dollar per week limit on the benefit amount.[1] A permanently, but partially, disabled worker in Ohio is eligible to receive up to a maximum of fifty-six dollars per week.[2]

In each of the states studied, if an employee has a permanent disability in the form of the loss of a hand, arm, foot, leg or eye and subsequently suffers another work injury which results in a similar permanent disability he is entitled to payment from a second injury fund.

For permanent partial disability, a healing period is provided in Iowa's, Minnesota's and Missouri's Workmen's Compensation Laws. In Iowa, the healing period during which additional benefits are paid may be as long as sixty percent of the scheduled weekly period. Minnesota's Workmen's Compensation Law provides for a healing period of up to one hundred and four weeks for permanent partial disability.[3] In Missouri, the healing period shall not extend beyond thirty weeks.[4]

Vocational Rehabilitation

Iowa law provides for rehabilitation benefits of twenty dollars per week for thirteen weeks. This period is extendable to twenty-six weeks by the Industrial Commissioner. There is no provision in the Kansas Workmen's Compensation Law for referral of an injured worker to vocational rehabilitation training. Neither are rehabilitation benefits payable as they are in Iowa.

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[1]Missouri, op. cit., Sec. 287.190.

[2]Ohio, op. cit., Sec. 4123.57.

[3]Minnesota, op. cit.

[4]Missouri, op. cit.

An injured employee in Michigan is entitled to vocational rehabilitation training or treatment for a period of fifty-two weeks, extendable to twice that amount by the Director of the Michigan Workmen's Compensation Bureau.[1] This is a period four times longer than the maximum allowed under Iowa's Law. The Michigan Act provides that all expenses be borne by the employer. Additional payments for transportation or any extra and necessary expenses are also provided.[2]

Under the provisions of the Minnesota Law, any worker suffering from an injury producing permanent disability must be referred to either a public or private vocational rehabilitation agency to determine if retraining for a new occupation would significantly reduce or remove any reduction in employability caused by the injury. If the evaluating agency certifies that a period of retraining will significantly reduce or prevent the decrease in employability resulting from the injury, the employer is required to pay up to one hundred and four weeks of additional compensation during the actual period of retraining. The compensation payable during this period is equal to two-thirds of the difference between the daily wage of the worker at the time of the injury and the wage he is able to earn if in a partially disabled condition, subject to a maximum compensation of seventy-three dollars per week.[3] There is no automatic referral of an injured worker to a vocational rehabilitation agency in Iowa as there is in Minnesota.

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[1]Michigan, op. cit., Sec. 418.319.

[2]Ibid.

[3]Minnesota, op. cit., Sec. 176.101(8).

It is the stated purpose of Missouri's Law:

> . . . to restore the injured person as soon as possible and as nearly as possible to a condition of self-support and maintenance as an able-bodied workman by physical rehabilitation.[1]

To this effect, Missouri has created a Board of Rehabilitation to review the case of any serious injury involving disability beyond the one hundred and eighty days when medical aid is provided. If the employer or insurer has not offered physical rehabilitation where it is deemed necessary and requested by the employee, the Board may order such rehabilitation. A payment of ten dollars per week is made to the employee undergoing rehabilitation for a period of twenty weeks. This period may be extended to forty weeks by the Board.[2]

Ohio provides vocational rehabilitation to an injured employee for a period of up to fifty-two weeks. During this period the employee is eligible for up to forty dollars and twenty-five cents maintenance allowance per week.[3] Both the number of weeks and the dollar amount in Ohio are twice those provided for in Iowa.

Death Benefits

In Iowa, Michigan, Minnesota, Missouri and Ohio, if death results from an injury, benefits are paid at a rate equal to two-thirds of the employee's average weekly wages. One exception exists in Minnesota: If the deceased is survived only by a widow, the bene-

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[1]Missouri, op. cit., Sec. 287.141.

[2]Ibid.

[3]Ohio, op. cit.

fit is computed at forty percent of the workers average weekly earnings. Kansas does not impose a maximum percentage of the worker's wages in computing death benefits. The minimum and maximum benefits for widows and children in death cases are summarized in Table 4.

Death benefits in Kansas are payable weekly at fifty-six dollars. If an injury results in the death of an employee who leaves persons wholly dependent upon his earnings, the total death benefit is three times the deceased's average yearly earnings. The death benefits, however, is subject to a maximum of eighteen thousand five hundred dollars.[1] An additional one thousand three hundred dollars is payable as a death benefit in Kansas for each minor dependent. This amount is payable at the rate of four dollars per week. The aggregate total of compensation that is payable, however, cannot exceed twenty-five thousand dollars.[2]

Minnesota, Missouri and Ohio do not place a time limitation on the payment of death benefits. The compensation payable in Minnesota in case of death to persons wholly dependent upon the deceased worker is subject to a maximum compensation of eighty dollars per week. This compensation shall be paid during dependency but shall not exceed thirty-five thousand dollars in case of a dependent wife, child or orphan.[3]

The maximum death benefit total in Missouri is twenty-two

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[1]Kansas, op. cit., Sec. 44-510(2).

[2]Ibid.

[3]Minnesota, op. cit., Sec. 176.111(19).

Table 4

Minimum and Maximum Benefits for Widows and Children in Death Cases[a]

State	Maximum percentage of wages		Maximum period	Payments per week		Total maximum stated in law
	Widow only	Widow plus children		Minimum	Maximum	
Iowa.....	66 2/3	66 2/3	300 weeks.....	$18, or actual wage if less.	46% of average weekly wage ($59).	None
Kansas.....	--	--	Widowhood; children until 18.	No weekly minimum for total dependents but a minimum total of $2,500.....	$56 plus $4 for each minor child, not exceeding 5 children.....	$18,500.00-$25,000.00[b]
Michigan...	66 2/3	66 2/3	500 weeks; children until 21.	$27 to $39[b].....	$84 to $107[b].....	None
Minnesota..	40	66 2/3	Widowhood; children until 18.	$17.50, or actual wage if less.	$80.....	$35,000.00
Missouri...	66 2/3	66 2/3	Widowhood; children until 21.	$16.....	$70.....	$22,500.00
Ohio.....	66 2/3	66 2/3	None.....	$49.....	$77.....	$24,000.00

[a]As of May 1, 1972.

[b]According to number of dependents.

thousand, five hundred dollars.[1] Missouri's maximum weekly payment is seventy dollars per week.[2]

Under Ohio's Workmen's Compensation Law, death benefits are subject to a maximum of seventy-seven dollars per week. However, the first twelve weeks are paid in an amount equal to the full weekly wage, subject to the same maximum. No limit on the time period during which death benefits may be paid in Ohio is established, but the amount paid may not exceed twenty-four thousand dollars.[3]

Death benefits in Michigan and in Iowa are subject to a statutory time limit. In Michigan, benefits are paid for a period of five hundred weeks from the date of death.[4] Michigan's Workmen's Compensation Law makes the maximum death benefit contingent upon the number of dependents. The current maximum death benefit paid in Michigan for a fatally injured employee with one dependent is eighty-four dollars and with five or more dependents it is one hundred and seven dollars.[5]

Iowa's maximum death benefit is fifty-nine dollars, payable for three hundred weeks. The current maximum weekly death benefit paid in Iowa is surpassed in each of the states reviewed with the exception of Kansas. Michigan is the only state other than Iowa which imposes a maximum time period, five hundred weeks, during which

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[1]Missouri, op. cit., Sec. 287.240.

[2]Ibid.

[3]Ohio, op. cit., Sec. 4123.59.

[4]Michigan, op. cit., Sec. 418.321.

[5]Ibid.

death benefits are payable. The objective of workmen's compensation in death cases should be to provide indemnity benefits to the widow until her death or remarriage, and to children until at least age eighteen. This objective is not met in Iowa's law.

Funeral expenses in the states reviewed are paid in varying amounts. In all cases to which the Kansas Workmen's Compensation Law applies, the employer is liable for funeral expenses up to six hundred dollars.[1] In Iowa and Minnesota,[2] the employer is required to pay the expense of burial, not exceeding an amount of one thousand dollars. In Michigan, if death results from an injury, the reasonable expenses of the employee's burial are paid, up to a maximum of one thousand five hundred dollars.[3] The burial expenses furnished by the employer in Missouri are limited to eight hundred dollars.[4] Reasonable funeral expenses in an amount not to exceed seven hundred and fifty dollars are payable under the Ohio law if an employee is fatally injured.[5]

Standards for Comparison

The International Association of Industrial Accident Boards and Commissions, more commonly known as the I.A.I.A.B.C., has developed twenty-two standards which a model workmen's compensation law would be required to meet. These standards are:

1. Compulsory law: Employer or employee does not have

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[1]Kansas, op. cit., Sec. 51-10(5).

[2]Minnesota, op. cit., Sec. 176.111(18).

[3]Michigan, op. cit., Sec. 418.345.

[4]Missouri, op. cit.

[5]Ohio, op. cit., Sec. 4123.66.

the right of election to reject coverage as provided by the workmen's compensation law of the jurisdiction.

2. No numerical exemption: There shall be no numerical exemption of the employees included under the workmen's compensation law of the jurisdiction.

3. Specific exemption: There shall be no specific exemption of any hazardous employment.

4. Farm employment: All farm employees to be covered by all employers who have a payroll that exceeds $1,000 per annum.

5. Coverage of occupational injuries: Coverage of all occupational injuries, including ionizing radiation, should be full and complete rather than limited to a schedule specified in the law.

6. Coverage of occupational diseases: Coverage of all occupational diseases, including ionizing radiation, should be full and complete rather than limited to a schedule specified in the law.

7. Medical care for occupational injuries: Medical care should be full for occupational injuries without limitation to cost or time and shall include physical rehabilitation and vocational rehabilitation.

8. Medical care for occupational diseases: Medical care should be full for occupational diseases without limitation as to cost or time and shall include physical rehabilitation and vocational rehabilitation.

9. Supervision of medical care: The workmen's Compensation agency should have the authority to supervise and control medical care and should exercise such authority and supervision.

10. Initial choice of physician: The injured workman shall have free initial choice of the physician who treats him.

11. Rehabilitation: All activities, care, cure, maintenance, and restoration to work of injured workers should be under the direct control and supervision of the compensation agency. To this end, the workmen's compensation agency should include a rehabilitation division which should promote full utilization and development of governmental and private rehabilitation facilities for the benefit of injured workers.

12. Maintenance benefits: Benefits for maintenance and other necessary expenses should be provided during the period of rehabilitation and such benefits to be in addition to those provided in medical care and compensation awards.

13. Average weekly wage: Compensation should be at the rate of 66 2/3 percent of the worker's wages up to at least 66 2/3 percent of the average weekly wage for the jurisdiction. (Average weekly wage of the jurisdiction is meant to be the average wage of all employments in the jurisdiction.)

14. Permanent total disability: In the case of permanent total disability, benefits should be paid for life or during such disability.

15. Death benefits: In case of death, benefits should be paid to the widow until her death or remarriage.

16. Death benefits: In case of death, benefits should be paid to the children during their minority, and to other dependents during the period of their inability of self-support, in addition to widows benefits.

17. Waiting period: The waiting period should be for not more than 3 calendar days; and if the disability continues for more than 2 weeks, compensation should be paid from the date of disability.

18. Second injury fund: Legislation should facilitate the employment of physically handicapped workers by giving coverage of disability or death resulting from a combination of prior disease or infirmity with a covered occupational injury or disease, and with limitation of employer's liability when disability or death results from a combination of prior disease or infirmity with a covered occupational injury or disease, and provide a special fund for paying benefits authorized over and above the employer's liability.

19. Claims administration: The administration of workmen's compensation law should be under and confined to the supervision and direction of the duly appointed administrative agency of each jurisdiction.

20. Judicial review: Judicial review should be limited to consideration of the record of the Board on questions of law only without a trial de novo.

21. Limitation for filing claim: There should be adequate time limit for the filing of an occupational disease claim, including disability resulting from ionizing radiation.

22. Limitation for filing claim: There should be adequate time limit for the filing of an occupational injury claim, including disability resulting from ionizing radiation.[1]

The I.A.I.A.B.C. annually requests the administrator of the workmen's compensation program in each state to evaluate his law as compared to the above standards. Specifically, the administrator completing the questionnaire is asked to estimate, to the nearest ten percent, the proportionate coverage provided by that state's law as compared with the coverage that would be provided if the law met each standard. A ninety or one hundred percent response indicates virtual compliance with the standard. The responses for 1971 from

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[1]International Association of Industrial Accident Boards and Commissions "Report of the Statistics Committee," January 24, 1972, p. 4. (Mimeographed.)

the states under consideration are summarized in Table 5.[1]

The average percentage compliance to all twenty-two I.A.I.A.B.C. standards in 1971 was as follows: Ohio, eighty-five percent; Minnesota, eighty-four percent; Missouri, eighty-three percent; Iowa, seventy-nine percent; Michigan, seventy-four percent; and Kansas, thirty-nine percent. Using the I.A.I.A.B.C. standards to rank the various state workmen's compensation laws, therefore, reveals that Iowa ranks fourth among the six states examined. Iowa, however, was only six percentage points behind the highest ranking state, Ohio. The Kansas Workmen's Compensation Law was found to comply the least with the recommended I.A.I.A.B.C. standards, recording an average percentage compliance of less than half that of Iowa's.

The National Commission on State Workmen's Compensation Laws

The Congress of the United States, in the Occupational Safety and Health Act of 1970,[2] declared that:

> . . . the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen's compensation . . .[3]

Congress stated, however, that:

> . . . in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical know-

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[1] Ibid., pp. 1-3.

[2] 84 Stat. 1590, 29 U. S. C. 651 (1970).

[3] 84 Stat. 1616, 29 U. S. C. 677 (1970).

Table 5

Percentage Figures to Indicate How Well States Measure Up to the I.A.I.A.B.C. Standards[a]

State	I.A.I.A.B.C. Standard Number and Percentage State Measures up to Given Standard										
	1 %	2 %	3 %	4 %	5 %	6 %	7 %	8 %	9 %	10 %	11 %
Iowa	100	100	100	30	100	100	100	100	90	40	50
Kansas	0	50	0	30	100	0	30	30	30	0	0
Michigan	100	90	100	40	100	100	100	100	0	40	100
Minnesota	100	100	90	10	100	100	100	100	50	100	10
Missouri	80	50	100	30	100	100	90	90	70	10	90
Ohio	100	90	100	90	100	100	100	100	100	100	100

State	I.A.I.A.B.C. Standard Number and Percentage State Measures up to Given Standard										
	12 %	13 %	14 %	15 %	16 %	17 %	18 %	19 %	20 %	21 %	22 %
Iowa	30	80	50	80	30	50	100	100	100	100	100
Kansas	0	60	30	40	100	50	100	0	0	100	100
Michigan	100	40	100	30	100	70	10	100	10	100	100
Minnesota	100	50	100	50	90	100	100	100	100	100	100
Missouri	60	70	100	100	100	80	100	100	100	100	100
Ohio	100	50	100	30	50	50	100	100	0	100	100

[a]As reported by state administrators to the I.A.I.A.B.C. Statistics Committee. Includes data received through January 21, 1972. Source: I.A.I.A.B.C., "Report of the Statistics Committee," January 24, 1972, pp. 1-3. (Mimeographed.)

> ledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and cost of living.[1]

For these reasons, the National Commission on State Workmen's Compensation Laws was established. Its function was to undertake a comprehensive study and evaluation of state workmen's compensation laws in order to determine if such laws provide an adequate, prompt and equitable system of compensation. The commission was required to transmit to the President and to the Congress no later than July 31, 1972, "such recommendations as it deems advisable."[2] The rather extensive list of recommendations made by the commission, all of which are espoused by this writer, are summarized in Appendix A.

The commission made its recommendations in the light of what it considered to be the objectives of a modern workmen's compensation program. These objectives are: (1) Workmen's compensation should provide broad coverage of employees and work-related injuries and diseases; (2) workmen's compensation should provide substantial protection against interruption of income; (3) workmen's compensation should provide sufficient medical care and rehabilitation services; (4) workmen's compensation should encourage safety; and (5) there should be an effective delivery system for workmen's compensation.[3]

The Workmen's Compensation Commission concluded that, although

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[1] Ibid.

[2] 84 Stat. 1617, 29 U. S. C. 678 (1970).

[3] National Commission on State Workmen's Compensation Laws, The Report of the National Commission on State Workmen's Compensation Laws, (Washington: Government Printing Office, 1972), pp. 35-40.

on an upward trend, workmen's compensation coverage is inadequate. Only about eighty-five percent of all employees are presently covered. Those not covered are those most in need of protection: The non-union, low-wage workers, such as farm help, domestics and employees of small firms.[1] Although the Workmen's Compensation Commission has not published data for individual states, a review of the laws of the states under consideration revealed that each denied workmen's compensation coverage to some segment of the labor force. In Iowa, the most obvious exclusion from compulsory coverage is that of farm workers.

The commission concluded that most work-related injuries are compensable in all jurisdictions. The status of work-related diseases was found to be less satisfactory, however. Some states do not provide full coverage for work-related diseases, or the statute of limitations is so short that many diseases are not compensable because symptoms appear long after exposure.[2] Of the six states being examined, only Kansas was found deficient in providing workmen's compensation coverage for work-related diseases.

According to the Workmen's Compensation Commission, workmen's compensation programs, in general, do not provide adequate income maintenance. Disabled workers in the majority of cases receive less than two-thirds of their lost wages. In most states, maximum weekly benefits for a non-farm family of four are below the poverty level of income. Many states also have limits on the duration or total amount of benefits or both. The inadequacies of benefits mean that too high a proportion of the burden of work-related disability is borne by

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[1] Ibid., p. 117. [2] Ibid., pp. 116-117.

workers and the taxpayer rather than by employers.[1]

Workmen's compensation income benefits were found by the commission not to be equitable. One obvious inequity is the substantial difference among the states in the adequacy of benefits. There also exist intrastate inequities in jurisdictions with low maximum weekly benefits because a higher proportion of wage loss is replaced for low-wage workers than for high-wage workers.[2]

The provision of medical care, including physical rehabilitation is generally adequate, equitable and prompt.[3] Exceptions are in those states, such as Kansas of the ones examined in this study, which limit the dollar amount of medical care.

The vocational rehabilitation record was found by the commission to be uneven: Some programs are excellent but too many are not.[4] Judging only what may be found in the provisions of the various state workmen's compensation laws examined earlier, it appears that Michigan, Minnesota and Ohio have the best rehabilitation programs. In Iowa and Missouri, the vocational rehabilitation programs appear adequate. There is no provision for rehabilitation in the Kansas workmen's compensation law.

Addressing itself to the objective that workmen's compensation should encourage safety, the commission stated that,

> While there is only limited evidence of the actual influence of workmen's compensation on safety, the use of merit rating means the potential influence is significant. As income benefits and medical care and rehabilitation are provided, the assessment against the employers for the bene-

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[1] Ibid., p. 118. [2] Ibid. [3] Ibid. [4] Ibid.

> fits should provide automatic incentives to safety. Substantially stronger safety incentives would result from the benefits recommended by this Commission. The safe way will be the economical way.[1]

The four basic objectives of workmen's compensation, coverage, income maintenance, medical care and rehabilitation and safety, can be achieved only if employers, insurance carriers, state agencies and all others involved in the workmen's compensation program are organized into an effective delivery system. The two main deficiencies in the delivery system are rooted in attitudes that are passive rather than active. Some states do not initiate programs to protect workers, usually for lack of adequate funding and staffing of the workmen's compensation agencies. The second deficiency, excessive litigation, results in unnecessary delay, expense and interference with rehabilitation.[2]

The conclusion by the National Commission on State Workmen's Compensation Laws is that state workmen's compensation laws in general are inadequate and inequitable. While several states have good programs, and while medical care and some other aspects of workmen's compensation are commendable in most states, the strong points are too often matched by the weak.[3] If the recommendations for a modern workmen's compensation program recommended by the commission are adopted by the states, the program should be retained rather than seek another solution to the problem of compensation for work-related injuries and illnesses.

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[1] Ibid. [2] Ibid., pp. 118-119. [3] Ibid., p. 119

CHAPTER VI

ADEQUACY OF IOWA'S WORKMEN'S COMPENSATION BENEFITS

An analysis of the scope of Iowa's Workmen's Compensation Law must relate to how well it meets the goal of providing reasonable income benefits to work-accident victims. Key indications of the adequacy of workmen's compensation benefits include the percentage of wage loss compensated in temporary total disability cases and the relation of benefits to payrolls. Another measure of the adequacy of Iowa's workmen's compensation benefits is their relationship to established income poverty guidelines. Also, benefits must be examined in the light of recent Federal legislation which affects Iowa.

Proportion of Wage Loss Compensated

The effectiveness of a state's workmen's compensation law may be measured by the extent to which it is replacing the wages lost as the result of disabilities incurred while the worker was employed. The intent of Iowa's Workmen's Compensation Law is to replace sixty-six and two-thirds percent of a worker's weekly wage during total disability.[1]

The objective of replacing the injured worker's income with a benefit equal to a stated percentage of his wage is generally undercut, however, by the existence of weekly maximum dollar limits. The

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[1]Iowa, Code of Iowa, Sec. 85.34, (1971).

result is a lower benefit-wage ratio than that originally incorporated into the law. The wage replacement objective of a state's workmen's compensation law is also defeated by a lag in enacting statutory increases in the ceiling on the weekly benefit amount. This is particularly true in periods of rising wages.[1]

Prior to 1970, Iowa's maximum weekly dollar benefit was dependent upon legislative enactment in the biennial sessions of the General Assembly. The maximum weekly benefit payable under the provisions of Iowa's Workmen's Compensation Law for a period of temporary total disability as a proportion of the average weekly wage from 1945 through 1971 is shown in Table 6. The effect of the statutory increases, or more specifically, the lag in enacting statutory increases, is readily discernable from the table.

In the years in which increases became effective, the maximum benefit as a percent of the average weekly wage ranged between forty-three percent in 1947 and fifty-six percent in 1965. A steady rise in the state's average weekly wage during the years intervening statutory increases served to erode the benefit-wage ratio. In fact, the increase in the maximum benefit payment from eighteen to twenty dollars in 1947 was not sufficient to keep pace with the gain in Iowa's average weekly wage. The benefit amount increased eleven percent while the average weekly wage jumped sixteen percent. The net result was a decline in the benefit-cost ratio in a year in which legislative action was intended to increase the ratio of benefits to the average

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[1]Alfred M. Skolnik and Daniel N. Price, "Another Look at Workmen's Compensation," Social Security Bulletin, XXXIII No. 10 (October 1970), p. 11.

Table 6

Iowa Weekly Workmen's Compensation Benefits
for Temporary Total Disability Compared
to Average Weekly Earnings
1945 - 1971

Year[a]	Maximum Benefit Payment	Average Weekly Wage[b]	Maximum Benefit as a percent of Avg. Weekly Wage[c]
1945	$18.00	$ 37.54	47.9
1946	same	40.19	44.8
1947	20.00	46.54	43.0
1948	same	51.39	38.9
1949	24.00	53.03	45.3
1950	same	56.20	42.7
1951	28.00	61.26	45.7
1952	same	64.00	43.8
1953	32.00	67.17	47.6
1954	same	68.92	46.4
1955	same	71.98	44.5
1956	same	73.12	43.8
1957	same	75.78	42.2
1958	same	79.40	40.3
1959	44.00[d]	83.76	52.5
1960	same	85.59	51.4
1961	same	87.70	50.2
1962	same	90.47	48.6
1963	50.00[d]	94.06	53.2
1964	same	97.25	51.4
1965	56.00[d]	100.04	56.0
1966	same	105.27	53.2
1967	same	108.89	51.4
1968	same	115.35	48.5
1969	same	121.78	46.0
1970	61.00	128.69	47.4
1971	64.00	136.10	47.0

[a]Effective July 1 of each year.

[b]From unpublished records of the Iowa Employment Security Commission. Calendar year figures.

[c]Benefit-wage ratio.

[d]Maximum paid to a worker with four or more children.

weekly wage.

The steady rise in Iowa's average weekly wage between 1965 and 1969, during which there was no increase in the maximum benefit, had the effect of reducing the benefit-wage ratio over this five year period from fifty-six percent to forty-six percent. This steady decline in the benefit-wage ratio may have served as the impetus for the legislation enacted in 1970 to raise the benefit dollar maximum in tandem with increases in worker's wages.

Automatic adjustment of the benefit maximum according to increases in Iowa's earnings level was enacted in the second session of the Sixty-third General Assembly. The amended compensation schedule provided that:

> The weekly benefit amount payable to any employee for any week shall be, but shall not exceed an amount rounded to the nearest dollar, equal to fifty percent of the state average weekly wage paid employees as determined by the Iowa Employment Security Commission . . . Total weekly compensation for any employee shall not exceed sixty-six and two-thirds percent per week of the employee's average weekly earnings; provided further, that such compensation shall not be less than eighteen dollars per week, except if at the time of his injury his earnings are less than eighteen dollars per week, then he shall receive in weekly payments a sum equal to the full amount of his weekly earnings.[1]

Two years' experience has transpired since the enactment of the legislation making Iowa's temporary total disability benefits equal to fifty percent of the State's average weekly wage. Whereas the objective of fifty percent was specified, the actual benefit-wage ratio in 1970 and 1971 did not meet this objective. The maximum benefit in 1970 was forty-seven and four-tenths percent of the average weekly

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[1]Iowa, Code of Iowa, Sec. 85.37, (1971).

wage paid that year. In 1971 the maximum benefit was only forty-seven percent of the average weekly wage. This situation, however, is inevitable. The lag in computing Iowa's average weekly wage necessarily results in a benefit-wage ratio less than that specified by law. The increase in the benefit amount becomes effective July 1 of each year based upon the average weekly wage for the previous year. As a result, the benefit-wage ratio of the compensation being paid to an injured worker may lag the year upon which it is based by as much as eighteen months: The compensation paid in June, 1972, for example, was based upon Iowa's 1970 average weekly wage.

Benefits in Relation to Payroll

Yearly changes in a state's total payroll amount is an aggregate statistic representing a composite of changes in wage levels and employment. Relating workmen's compensation benefit payments to payroll year by year may give some indication of the extent to which benefits have kept pace with the increase in the number of workers covered by workmen's compensation, with the rise in wage rates on which cash benefits are based, and indirectly, with the growing costs of hospitalization and medical benefits.[1]

Table 7 shows the total of workmen's compensation benefits as paid by private insurance carriers and the total statewide annual payroll in Iowa for the years 1949 through 1971. Over this twenty-three year period, Iowa's annual payroll has increased fourfold, from about one billion dollars in 1949 to over four billion dollars in 1970. Over

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[1]Skolnik and Price, op. cit., p. 17.

Table 7

Iowa Aggregate Workmen's Compensation Benefits, Total Annual Payroll and Injury Frequency Rates in Manufacturing 1949 - 1971

Year	Workmen's Compensation Benefits[a]	Total Annual Payroll[b]	Benefits as Percent of Payroll[c]	Injury Frequency Rates[d]
1949	$ 3,373,720	$ 937,972,242	0.36	--
1950	3,958,369	1,024,355,618	0.39	--
1951	4,347,438	1,177,243,753	0.37	--
1952	4,765,225	1,239,524,719	0.38	--
1953	5,090,721	1,308,613,327	0.39	--
1954	5,060,590	1,307,770,672	0.39	--
1955	5,289,563	1,415,054,246	0.37	--
1956	6,093,372	1,620,067,555	0.38	--
1957	6,260,829	1,683,670,656	0.37	--
1958	6,232,914	1,747,578,763	0.36	--
1959	6,885,416	1,954,612,042	0.35	--
1960	7,478,314	2,009,175,949	0.37	--
1961	7,608,284	2,035,909,662	0.37	--
1962	7,709,531	2,117,551,857	0.36	--
1963	8,050,780	2,246,774,720	0.36	--
1964	8,691,297	2,396,535,309	0.36	16.3
1965	9,525,360	2,591,444,070	0.37	16.6
1966	11,132,177	2,937,072,681	0.38	16.3
1967	12,507,302	3,166,434,175	0.39	16.8
1968	12,947,704	3,428,067,496	0.38	19.5
1969	13,805,757	3,698,053,087	0.37	19.0
1970	15,197,762	3,920,761,584	0.39	23.1
1971	16,464,148	4,141,562,117	0.40	--

[a]Paid by insurance carriers. Source: State of Iowa, Report of the Insurance Department of Iowa (Des Moines, Iowa: State of Iowa, 1950 through 1972).

[b]From unpublished records of the Iowa Employment Security Commission.

[c]Benefit-payroll ratio.

[d]Number of disabling work injuries per million employee-hours worked. Source: Iowa Bureau of Labor, Iowa Work Injury Rates, 1970 (Des Moines, Iowa: State of Iowa, 1971), Table 3.

this same period, the total privately insured workmen's compensation benefits increased at approximately the same rate.

The benefit-payroll ratio, benefits expressed as a percent of payroll, has fluctuated by no more than five one-hundreths of one percent during the period reported. While the ratio of benefits to payroll has followed a somewhat irregular pattern, its relative stability indicates that changes in the benefit amounts have been keeping pace with increases in employment and wages.

One other variable that must be considered in examining the trend of the benefit-payroll ratio is the change in the frequency of work injuries. The benefit part of the benefit-payroll ratio is affected by patterns in accident experience as well as statutory changes in benefits and economic changes.

Injury frequency rates, the number of disabling work injuries per million employee-hours worked, are also shown in Table 7. Frequency rates for Iowa are available only for the seven-year period from 1964 through 1970. From 1964 to 1967, Iowa's injury frequency rate remained relatively stable. During this same period the benefit-payroll ratio was marked by a steady increase. During these years it may be inferred that workmen's compensation benefits more than kept pace with increased employment and economic changes in wages.

Between 1967 and 1968, Iowa's injury frequency rate showed a marked increase. This was accompanied by a decline in the benefit-payroll ratio which continued into the following year. In this instance, the increase in the amount of the benefits paid can be attributed solely to the rise in the number of injuries sustained by Iowa workers. The benefit-payroll ratio declined because, it should be

remembered, there had been no statutory increase in benefits for at least four years.

The number of injuries sustained in Iowa increased rather sharply between 1969 and 1970. At the same time the benefit-payroll ratio also registered a marked rise. This was contrary to the situation which occurred during the last period of rising injuries. There had been no statutory increase in benefits in 1968 and 1969 and this fact served to lower the benefit-payroll ratio. However, in 1970, the Iowa General Assembly passed the progressive legislation which was intended to stabalize the maximum benefit amount at fifty percent of the average weekly wage paid in Iowa. The rise in the benefit-payroll ratio in 1970 and 1971 suggests that the increase in benefit outlays can be attributed to the liberalization of the law which was intended to keep pace with economic changes.

Benefits and the Poverty Income Level

Poverty is a value judgement. It is not something one can verify or demonstrate, except by inference and suggestion. To say who is poor is to use all sorts of value judgements. The concept has to be limited by the purpose which is to be served by the definition.

> Poverty in the usual sense may be defined as existing when the resources of families or individuals are inadequate to provide a socially acceptable standard of living. Both the specification of what standard of living should be regarded as socially acceptable (the poverty standard) and the measurement of the resources available to people for comparison with that standard, in order to evaluate the size and shape of the poverty problem, bristle with difficulties . . . . Defined in this way -- as inadequacy of financial resources or "income" -- poverty inevitably has a multiplicity of causes, or to put the same point another way, the poor have no unique common characteris-

tics that distinguish them from the nonpoor other than their poverty itself.[1]

The Social Security Administration, in 1964, developed a poverty threshold for determining who is "poor" in our society. This threshold is an attempt to specify the minimum money income that could support an average family of a given composition at the lowest level consistent with the standards of living prevailing in the country. It is based on the amount needed by families of different size and type to purchase a nutritionally adequate diet on the assumption that no more than a third of the family income is used for food. The poverty threshold was developed from food consumption surveys conducted by the United States Department of Agriculture. These surveys revealed that the average expenditure for food by all families was about one-third of income.[2]

The Social Security Administration made the assumption that the poor would have the same flexibility in allocating income as the rest of the population but that, obviously, their margin for choice would be less. The amount allocated to food from the average expenditure was cut to the minimum that the Agriculture Department said could still provide American families with an adequate diet. This economy food plan in 1964 was postulated at seventy cents a person for food each day, assuming that all foods would be prepared at home.[3]

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[1]Harry G. Johnson, "Unemployment and Poverty", Poverty Amid Affluence, ed. Leo Fiskman (New Haven: Yale University Press, 1966), pp. 7-8.

[2]Statement by Lester Kline, Director, Office of Planning, Research and Evaluation, Office of Economic Opportunity, personal interview, March 14, 1972.

[3]Ibid.

It is important to remember that these income criteria are derived solely from the estimated cost of the minimum diet and its presumed relationship to other daily necessities. The index is arbitrary in that it relies only on income as the criterion of poverty. But, income statistics are the only ones that are available on a regular basis.

The poverty threshold is adjusted annually based on an annual survey conducted by the Bureau of Census each March of fifty thousand households in the United States. Also, the cost of the Agriculture Department's adequate diet is adjusted annually by the "all items" consumer price index. A person is currently considered to be poor if his or her family's annual net income does not exceed the following limits:

Family Size	Continental United States	
	Nonfarm	Farm
1	$2,000	$1,700
2	2,600	2,100
3	3,300	2,800
4	4,000	3,400
5	4,700	4,000
6	5,300	4,500
7	5,900	5,000[1]

Income limits for families of more than seven persons can be determined by adding six hundred dollars for each additional person to the nonfarm level and five hundred dollars for each additional person to the farm level of income.[2]

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[1]U. S. Department of Labor, Labor Department Increases Income Levels Defining Poor Families, Manpower Administration Release No. 72-84 (Washington: Government Printing Office, February 11, 1972), p. 1.

[2]Ibid.

Much may be said about the limitations of the Social Security Administration's poverty index. The concept refers only to current income and ignores assets and other money income. It specifies no list of goods and services other than food. However, for many families, particularly those with several children, the cost of housing may be even more critical. The poverty index assumes that if the food expenditure is cut to a minimum, everything else would be cut in proportion. Yet, this is not always possible, at least not for housing. It may be argued that the index makes no adjustment and no allowance for income in kind except for farmers. The index may also be criticized because it ignores life's non-monetary satisfactions.

Whatever arguments may be raised against the poverty index it still remains a fact of life. The income guidelines are used in all government assistance programs in which poverty is a qualifying eligibility factor.

How can workmen's compensation benefits in Iowa be measured against the poverty income level? The latest census of population revealed that the average number of persons per household, or family size, in Iowa was three (3.008).[1] Therefore, because the income poverty guidelines developed by the Social Security Administration makes no distinction for geographic area within the continental United States, this "average" Iowa family of three would be considered poor if their total income did not exceed three thousand three hundred dollars.

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[1]U. S. Bureau of the Census, Census of Population, 1970, General Population Characteristics, Iowa PC(1)-B17 (Washington: Government Printing Office, 1972), Table 36.

As indicated earlier, benefits for permanent total disability paid to injured workers under Iowa's Workmen's Compensation Law are currently computed on the basis of two-thirds of the employee's average weekly earnings, but not more than a weekly benefit amount equal to forty-six percent of the state average weekly wage paid employees as determined by the Iowa Employment Security Commission. The current maximum benefit is sixty-three dollars for five hundred weeks. A permanently disabled worker in Iowa receiving the maximum workmen's compensation benefit, therefore, has an annual income of three thousand, two hundred and seventy-six dollars. Such an injured worker with two dependents falls just below the income poverty level of three thousand three hundred dollars and would be considered to be "poor" if there were no other current source of income to the family.

Similarly, the maximum weekly compensation paid to the dependents of a worker who has died as a result of an occupational injury or illness is also sixty-three dollars, for a maximum of three hundred weeks. If the fatally injured worker left three dependents -- a wife and two children -- the Iowa Workmen's Compensation Law provides that they live in poverty unless the wife or a child goes to work.

A worker in Iowa who is temporarily disabled is not much better off. During his period of incapacity, and during the healing period if he has suffered a permanent partial disability, the maximum allowable compensation is sixty-eight dollars a week. This is an annual rate of three thousand, five hundred and thirty-six dollars. If the injured breadwinner is a member of the "average" Iowa family of three, and if there is no other family income, such a family will not be considered

to be poor because their income is over the poverty level. However, such a near-poor family is worse off than if they were poor because they are ineligible for any government assistance programs that are based upon the poverty income guidelines.

The discussion so far has been limited to the average family of three persons. It should be remembered that the extent of a family's poverty as determined under the Social Security guidelines is dependent upon the size of the family. Therefore, a family of seven persons receiving no more income than the maximum benefits allowed under Iowa's Workmen's Compensation Law is expected to live on about half of what is considered to be the lowest adequate standard of living prevailing in this country.

It should also be remembered that the Iowa law allows a worker to receive only two-thirds of his average weekly wage as compensation. Not all injured workers are eligible to receive the maximum benefits delineated in the law and used in the above comparisons.

A further test of the adequacy of the Iowa Workmen's Compensation Law is the relationship of the law to recent Federal legislation as it affects benefits paid to disabled coal miners.

The Federal Coal Mine Health and Safety Act

On December 30, 1969, President Nixon signed into law the Federal Coal Mine Health and Safety Act of 1969.[1] This Act provides for workmen's compensation payments for coal miners disabled by pneumoconiosis, "black lung" disease, or to the surviving depen-

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[1]83 Stat. 795, 30 U. S. C. 801 (1971).

dents of miners whose death was due to such disease. The Act states that:

> Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's underground coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.[1]

This was the first time that federal workmen's compensation legislation was applied to workers in a private industry. The Secretary of Labor has proposed rules which all states having coal mining, including Iowa, must meet.

Although the Act's primary purpose is to protect the health and safety of the nation's coal miners, the provisions for the payment of benefits is significant here. The Act provides for cash benefits to coal miners totally disabled due to pneumoconiosis arising out of employment in underground coal mines, and to widows of coal miners who died from the disease. The Social Security Administration is responsible for the administration and payment of claims filed prior to January 1, 1973.

Benefit claims for pneumoconiosis filed after 1972 are to be processed under State workmen's compensation laws in those States

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[1] Ibid.

whose laws are approved by the Secretary of Labor as providing adequate coverage for this disease. The Secretary of Labor is to publish the list of states whose workmen's compensation laws are determined as providing adequate coverage by October 1, 1972. Generally speaking, the Secretary will determine a State law to have adequate coverage for pneumoconiosis if the cash benefits under such law and the criteria for determining eligibility are not less favorable to the claimant than those applicable to claims filed before January 1, 1973. The Act provides that for a State law to be included on the Secretary's list (1) benefits must be paid for total disability or death of a miner due to pneumoconiosis; (2) that the amount of such benefits is substantially equivalent to or greater than a rate equal to fifty percent of the minimum monthly payment to which a disabled Federal employee in the first step of grade GS-2 would be entitled at the time of payment; and (3) that any claim for benefits on account of total disability or death of a miner due to pneumoconiosis be deemed to be timely filed if such claim is filed within three years of the discovery of total disability due to the disease.[1]

Iowa's Workmen's Compensation Law will now be examined to determine if it meets the requirements for inclusion on the Secretary of Labor's list of states providing adequate coverage for pneumoconiosis. The Federal Coal Mine Health and Safety Act defines pneumoconiosis as a chronic dust disease of the lung arising out of employment in the Nation's underground coal mines, and includes anthracosis,

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[1] Ibid.

silicosis or anthracosilicosis arising out of such employment.

Section 85A.9 of the Iowa Occupational Disease Law sets forth a list of seventeen specific occupational diseases along with a description of the process or occupation in which the disease must be incurred in order to be compensable.[1] A casual relationship between the occupational disease and the enumerated occupation or process must exist. Therefore, to be covered by workmen's compensation it is not only necessary that the occupational disease be one of those listed in the statute but also that it results from employment in a specifically designated process or occupation.

The Iowa law declares silicosis to be an occupational disease if it is contracted in any process or occupation involving an exposure to or direct contact with silicon dioxide dust. Anthracosis and anthracosilicosis are not among the specified occupational diseases in Iowa's Workmen's Compensation Law. Therefore, Iowa's law does not appear to meet the first criterion for inclusion on the Secretary of Labor's list because it provides that no diseases other than the seventeen enumerated ones shall be considered occupational and compensable.

Iowa's Occupational Disease Law provides that compensation for disability from silicosis be not less than thirty-three and one-third percent of the benefits paid for total disability. Therefore, a worker suffering from silicosis is eligible for benefits for a minimum of about one hundred and sixty seven weeks to a maximum of five hun-

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[1] Iowa, Code of Iowa, Sec. 85A.9, (1971).

dred weeks, depending upon the extent of the disablement. Such an employee is currently eligible to receive a benefit payment of two-thirds of his average weekly earnings to a maximum of sixty-three dollars. The minimum compensation is set at eighteen dollars per week. Under the Federal Coal Mine Health and Safety Act, any worker suffering from pneumoconiosis is entitled to benefits until his death. After that the benefits are paid to his widow until such time as she may remarry. The five hundred week limit for benefit payments under the Iowa law, therefore, makes it inconsistent with the benefit entitlement under the Federal Act. A miner suffering from pneumoconiosis is entitled to one hundred and fifty-three dollars and ten cents per month under the Federal Act. This amount is increased by fifty percent for one dependent, to two hundred and twenty-nine dollars and sixty cents; seventy-five percent for two dependents, to two hundred and sixty-seven dollars and ninety cents; and by one hundred percent for three or more dependents, to a total of three hundred and six dollars and twenty cents per month.[1] The same amounts are payable to a widow of a miner who has died as a result of pneumoconiosis. The eighteen dollar minimum weekly payment under the Iowa law, therefore, does not compare favorably with the minimum benefit under the Federal Act. Iowa no longer makes provisions for increased benefits based upon the number of dependents.

The third requirement under the Federal Coal Mine Health and

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[1]Statement by Howard Sladek, Manager, Des Moines District Office, Social Security Administration, personal interview, March 28, 1972.

Safety Act that a claim for disability benefits due to pneumoconiosis be deemed to be timely filed if such claim is filed within three years of the discovery of total disability due to the disease is met in the Iowa law. Whereas a claim for compensation for most of the occupational diseases enumerated in the Iowa Workmen's Compensation Law is limited to one year, this period is specifically extended to three years in cases involving silicosis.

If a State Workmen's Compensation law does not meet the criteria discussed, and it appears that Iowa's law does not, then the claims for disability due to pneumoconiosis in that State will be administered by the United States Department of Labor. Whether or not such claims will be handled by the individual States or by the Labor Department, the benefits for claims filed under the Federal Coal Mine Health and Safety Act will be financed by coal mine operators.

CHAPTER VII

RECENT EXPERIENCE UNDER IOWA'S WORKMEN'S COMPENSATION LAW

Statistics for workmen's compensation in Iowa are practically nonexistent. The law requires the Industrial Commissioner, "To prepare and publish statistical reports and analyses regarding the cost, occurrence and sources of employment injuries."[1] However, due to budget deficiencies, the Commissioner cannot implement a statistical program.[2] The most recent, and only, statistic relating to work injuries covered by workmen's compensation is the number of injury reports received by the Office of the Industrial Commissioner. For the period July 1, 1969, to June 30, 1970, there were 15,493 such reports submitted by employers. This total includes one hundred and twenty-one fatalities.[3] Iowa's Workmen's Compensation Law requires employers to submit a report only if an injury results in incapacity for a period longer than seven days.[4]

The lack of meaningful data on workmen's compensation in Iowa may be explained in part by the fact that the state is not engaged in

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[1]Iowa, Code of Iowa, Sec. 86.8(3), (1971).

[2]Iowa Industrial Commissioner, Twenty-ninth Biennial Report of the Iowa Industrial Commissioner (Des Moines, Iowa: State of Iowa, 1970), p. 7.

[3]Ibid., p. 9.

[4]Iowa, Code of Iowa, Sec. 86.11, (1971).

directly operating an insurance program. The Industrial Commissioner does not set rates, collect premiums or pay benefits. The state is not in a position financially, as noted earlier, or administratively to gather the type of data that are the normal byproducts of the workmen's compensation system.

The balance of this chapter is an attempt to examine the recent experience under Iowa's Workmen's Compensation Law and to overcome the deficiency of reported data.

Self-Insurance

In 1970, there were 57,524 employers in Iowa.[1] An examination of the Relief Application Records at the Insurance Department of Iowa revealed that only one hundred and three Iowa employers had applied and were qualified as self-insurers of their workmen's compensation liability. The greatest majority of firms have commercially insured their liability. The unusually low ratio of self-insured employers to the total, less than two-tenths of one percent, precipitated a survey to determine the reasons why employers choose to self-insure their workmen's compensation liability.

The one hundred and three self-insurers were asked to respond by mail to a brief questionnaire. A series of questions relating to their experience as self-insured employers was asked of each. A description of the survey, a response analysis, the questions asked and a detailed summary of the answers supplied are contained in Appendix B.

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[1]U. S. Bureau of the Census, County Business Patterns, 1970, Iowa CBP-70-17, (Washington: Government Printing Office, 1971), Table 1B.

Of the seventy employers returning completed questionnaires, over half had chosen to self-insure their workmen's compensation liability from the onset of doing business in Iowa. Only one firm had been refused commercial workmen's compensation coverage and thereby compelled into a self-insured status.

Sixteen companies believed that their financial condition could not withstand a catastrophic loss and had purchased excess liability insurance to cover such an event. Fifty-four firms reported that they could withstand a major loss. However, thirty-nine of these, or seventy-two percent, had also commercially insured a part of their workmen's compensation liability, a better-safe-than-sorry measure.

The single characteristic most common to the self-insured employers was found to be an interest in safety. More than ninety-four percent of the employers, sixty-six out of seventy, answered in the affirmative when asked if their company has an on-going safety program. However, more than half of the responding companies, fifty-two percent, indicated that they did not have a doctor or nurse on the staff to care for occupational injuries as they occurred. A greater number, eighty-four percent, did have a lawyer or other trained professional on the staff to handle claims adjusting.

The response indicated that eighty percent of the companies insuring their own workmen's compensation liability had employees in more than one establishment or location in Iowa. Forty-seven percent of the responding firms, thirty-three, considered the volume of their medical and disability claims to be low and an equal number believed that their volume of claims was average.

When asked how their costs to self-insure compared with the

cost to commercially insure their workmen's compensation liability, the overwhelming majority, ninety percent, of the respondents said that the costs were lower. One employer felt the costs to self-insure were the same and six responded that they did not know how they compared. None of the firms completing the questionnaire believed their costs to be higher than insurance premium charges.

At the end of the questionnaire, each employer was asked to write briefly some of the reasons for choosing to self-insure his workmen's compensation liability. Fifty-one employers directly indicated lower costs and the savings of premiums as one of their reasons. Eighteen companies chose to self-insure partly because they believed it promoted a better employer-employee relationship. Other reasons given included: Improved loss control, the prompt payment of claims, higher benefits to injured workers than provided by the Iowa Law and the fact that being self-insured encourages the interest and participation of top management in safety programs.

There are, therefore, a great number of Iowa employers who theoretically would be able, and find it profitable, to self-insure their workmen's compensation liability, but have chosen not to do so. The choice of whether or not an employer will undertake the highly individualistic venture of a self-insurance program depends upon the proposed or actual operations of the business. A new business may hesitate to self-insure its workmen's compensation liability because of the many unknown factors. Also, an employer must have a fairly large number of workers in order to consider a self-insurance program on a sound basis from the standpoint of recordkeeping, claims administration and claim settlement. An employer must decide whether or not

he can economically perform all of the functions that an insurance company provides. The employer must also decide whether his financial condition would enable him to underwrite a possible catastrophic loss and if he can convince the Insurance Department that he is able to self-insure. It is unlikely that an employer first considering self-insurance would have administrative personnel qualified to perform safety inspections, accident investigations, claim processing duties and make benefit settlements that are normally handled by insurance carriers. Most employers, however, would have the clerical staff to handle the more routine aspects such as the required reporting.[1]

An employer could eliminate the catastrophic loss possibility through the purchase of excess liability insurance. Under these circumstances the employer can chose to self-insure only that part of his workmen's compensation liability that he feels he is able to assume.

The Insurance Department is empowered to make the determination whether an employer can qualify as a self-insurer under Iowa's Workmen's Compensation Law. The Law states that:

> When an employer coming under this chapter furnishes satisfactory proofs to the insurance commissioner of such employer's solvency and financial ability to pay the compensation and benefits as by law provided and to make such payments to the parties when entitled thereto, or when such employer deposits with such commissioner security satisfactory to him and the industrial commissioner as guaranty for the payment of such compensation, such employer shall be relieved of the provisions of this chapter requiring insurance; but such employer shall, from time

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[1]Clifford Davis, et. al., The Iowa Law of Workmen's Compensation, Monograph Series No. 8, (Iowa City, Iowa: University of Iowa, Center for Labor and Management, College of Business Administration, 1967), pp. 133-134.

> to time, furnish such additional proof of solvency and financial ability to pay as may be required by such insurance commissioner or industrial commissioner.[1]

If an employer wishes to self-insure his liability he must submit an application for relief. The application must include a balance sheet of the company's financial structure, a statement regarding any compensation insurance carried in the last three years, the total number of employees and the total payroll for the last two years. If an application for relief is approved by the Insurance Commissioner, the employer is then released from the insurance requirements of the law. If an application to become self-insured is denied, the employer may either commercially insure his liability or post bond in an amount fixed by the Industrial Commissioner.[2]

Application by employers to self-insure their workmen's compensation liability are seldom denied by the Insurance Department.[3] Those applications that are denied are by reason of the insufficiency of the capital structure of the company to withstand a catastrophic loss and the unwillingness of the company to purchase excess liability insurance.[4] There are no great barriers to any Iowa employer wishing to become self-insured. There is, however, a lack of interest by the great majority of the firms to self-insure their compensation liability.

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[1] Iowa, Code of Iowa, Sec. 87.11, (1971).

[2] Iowa, Code of Iowa, Sec. 87.16, (1971).

[3] Statement by Robert A. Riker, Insurance Policy Analyst, Insurance Department of Iowa, personal interview, November 10, 1971.

[4] Davis, op. cit., p. 135.

Benefits

The Iowa Workmen's Compensation Law provides benefits for "personal injuries arising out of and in the course of the employment."[1] The compensation allowed may be classified into three distinct types of benefits: (1) medical, surgical and hospital care; (2) burial expenses; and (3) weekly death or disability benefits.

It is the purpose of this section to examine the relationship between the statutory amount of benefits allowable under the Law and the amount actually accrued to injured Iowans in 1970.

The records of the Insurance Department of Iowa indicate that $15,197,762.06 was paid in workmen's compensation in Iowa in 1970.[2] This amount is derived from the annual reports submitted by all insurance companies licensed to do business in Iowa. There is no attempt made by the Insurance Department to collect information concerning the amount paid for the various types of benefits nor to determine the number of claims in settlement of which this amount was paid.

In an effort to generate meaningful statistics on workmen's compensation benefits paid in Iowa, the one hundred and three self-insurers were contacted to report their experience for 1970. Each employer was requested to complete a questionnaire containing two basic items: (1) The number of claims for which workmen's compensation was paid, and (2) the total amount of the benefits paid. Each

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[1]Iowa, Code of Iowa, Sec. 85.17, (1971).

[2]Iowa Insurance Department, Report of the Insurance Department of Iowa (Des Moines, Iowa: State of Iowa, 1971), p. 112.

of these items was divided into medical cases and disability cases.

Each of the one hundred and three employers contacted responded to the questionnaire. Six of the respondents who were qualified as self-insurers had chosen to commercially insure their liability in 1970 and therefore reported no data. Nine firms completed only part of the questionnaire, most of them giving only the total amount paid in workmen's compensation benefits for the year.

The total benefits paid by all self-insured employers in 1970 equalled $1,976,510.29. This sum, added to the amount paid through private insurance carriers and the $408,351.24 paid in fiscal year 1970 through the Office of the Industrial Commissioner[1] brings the total workmen's compensation benefits paid in Iowa in 1970 to over seventeen and one-half million dollars.[2]

This total is a measure of the medical payments made in behalf of Iowan's injured at their occupations and of the lost wages replaced in the form of disability payments to those workers who were incapacitated from performing their work. It's magnitude is also a measure of the great number of disabling injuries which occur each year to workers.

The eighty-eight self-insured employers who responded fully to the questionnaire represent only two-tenths of one percent of the total nonagricultural employers in Iowa. However, the sample repre-

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[1] Iowa Industrial Commissioner, Twenty-ninth Biennial Report of the Iowa Industrial Commissioner (Des Moines, Iowa: State of Iowa, 1970), p. 12.

[2] $17,582,623.59.

sents nine and seven-tenths percent of the universe in terms of employment.[1]

All industries are represented by the firms that are self-insured. Manufacturing establishments dominated the sample, however, having nearly fifty percent of the employment. Although manufacturing accounts for only twenty-three percent of the total nonagricultural employment in Iowa, sixty-five percent of the total reported injuries incurred by Iowa's workers in 1970 were in the manufacturing industries.[2]

The ratio of workmen's compensation benefits paid by self-insured firms to the benefits paid by private insurance carriers in 1970 was eleven and one-half percent. This percentage approximates the employment sample-to-universe ratio of nine and seven-tenths percent. The data obtained through the survey, therefore, may be deemed representative of the total of Iowa's workmen's compensation benefits paid in 1970.

The results of the survey may be summarized as follows:

Total number of claims	:	10,236
Medical	:	8,416
Disability	:	1,820
Total Amount of benefits:		$1,154,504.35
Medical	:	648,509.50
Disability	:	505,994.85

The preponderance of the workmen's compensation claims in

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[1]Sample employment: 85,900. Total nonagricultural employment: 883,400. Source: Unpublished records of the Iowa Employment Security Commission.

[2]Iowa Bureau of Labor, Biennial Report of the Iowa Bureau of Labor, 1969-1970 (Des Moines, Iowa: State of Iowa, 1972), Table 13.

1970, eighty two and two-tenths percent, were for medical payments. Seventeen and eight-tenths percent of the total claims were for disability benefits.

All claims for disability benefits are inferred to have precipitated a medical claim. For the purposes of this study, it is also inferred that each claim is by a separate individual. In reality, the same worker may have occasioned more than one claim. Therefore, by projecting the sample total of medical claims, it may be estimated that 86,689 Iowan's were injured severely enough while on the job to require some medical treatment by a professional outside the employ of the company.[1] The injuries of 18,746 of these employees were severe enough to qualify them for disability benefits under Iowa's Workmen's Compensation Law.[2] In other words, they were unable to work for more than seven days.

In the sample of reporting firms, fifty-six and two-tenths percent of the total amount of benefits was for medical expenses and forty-three and eight-tenths percent was for disability payments. These ratios may now be applied to the total of all workmen's compensation benefits paid in Iowa in 1970. The resultant figures indicate that nearly ten million dollars of the total workmen's compensation benefits in 1970 were for medical claims[3] and that over seven and one-half million dollars was expended in the form of disability pay-

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[1](100 ÷ 9.7) X 8,416.

[2](100 ÷ 9.7) X 1,820.

[3]$9,881,434.46.

ments.[1]

On the basis of the total medical expenditure and the projected number of medical claims, the average medical payment made on behalf of an injured worker in 1970 was one hundred thirteen dollars and ninety-nine cents.[2] The total amount that an employer is required to pay for medical expenses on the behalf of an injured worker is unlimited in Iowa.[3] The relatively small amount paid on the average claim may give rise to the question of the need of an employer to furnish unlimited medical care. It has, however, been the opinion of the General Assembly that unlimited medical care be made available for an injured worker in the event that it is needed.

The average disability payment made in Iowa in 1970 was four hundred ten dollars and eighty-two cents.[4] By itself, this figure is somewhat meaningless because the number of weeks compensated is unknown. However, by using the national average number of days charged per disabling injury the average weekly benefit amount may be estimated.

In the United States, the average number of calendar days of disability per injury suffered in 1970 was fifty,[5] or seven and

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[1] $7,701,189.13.

[2] $9,881,434.46 ÷ 86,689.

[3] Iowa, Code of Iowa, Sec. 85.27, (1971).

[4] $7,701,189.13 ÷ 18,746.

[5] U. S. Department of Labor, Injury Rates in Manufacturing for 1970, Bureau of Labor Statistics Release No. 71-663 (Washington: Government Printing Office, December 20, 1971), p. 4.

one-tenth weeks. Dividing the average disability payment by the average compensable weeks yields an average weekly benefit amount of fifty-seven dollars and eighty six cents paid in Iowa in 1970.[1] While this figure is only an approximation of the weekly workmen's compensation benefit, it will serve for comparative purposes.

In 1970, the Iowa General Assembly increased the maximum allowable disability benefit to sixty-one dollars effective July 1. For the first six months of 1970 the benefit maximum was fifty-six dollars. The average maximum for the entire year may, therefore, be assumed to have been fifty-eight dollars and fifty cents. In other words, the average weekly benefit amount actually paid in Iowa in 1970, fifty-seven dollars and eighty-six cents, was very near to being at the level of the average allowable maximum benefit stated in the law, fifty-eight dollars and fifty cents.

It appears that, in practice, the maximum benefit prescribed by the law tends to limit the amount of workmen's compensation an injured worker may receive. The stated intent of the law, that a worker receive sixty-six and two-thirds percent of his wage in compensation, is circumvented by the statutory maximum.

One other conclusion may definitely be drawn from this review of the benefits paid in Iowa in 1970: That there exists a pronounced need for meaningful and accurate workmen's compensation data upon which to base future legislative changes in the provisions of Law.

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[1] $410.82 ÷ 4.1.

CHAPTER VIII

SUMMARY AND CONCLUSIONS

The purpose of this study has been to examine in some detail the development and scope of workmen's compensation in Iowa. In doing so, it was necessary to trace the history of work-accident indemnification from the common law of employer's liability through the earliest attempts at workmen's compensation legislation and, finally, to the present day. It was also necessary to examine the current benefit provisions of Iowa's Workmen's Compensation Law in relation to other states and to wage and income data and to evaluate their adequacy in terms of the benefits that currently accrue to a worker.

At common law, the victim of a work injury had numerous barriers to surmount before he could collect damages from his master. He was obligated to show that the injury was due to the negligence of his employer in not furnishing him with safe working quarters, safe and suitable appliances and equipment, reasonably safe rules of work and warning of special dangers. The burden of proof was clearly on the injured workman in these matters. The employer, on the other hand, had three defenses at his disposal. The worker could not recover if shown to have been negligent in any degree if this contributed to his injury, regardless of any negligence on the part of the employer. This was the defense of contributory negligence. Nor could the employee recover if a fellow worker could be proved to

have caused the injury by negligence on his part. This was the doctrine of common employment or the fellow-servant defense. Lastly, the injured workman could not recover if it was proven that his injury was due to an ordinary hazard of his employment of which he had, or should have had, knowledge. This third defense was known as assumption of risk.

Employers' liability statutes were enacted to mitigate the harshness of the common law. They, however, proved unsatisfactory. A large number of accidents and the increase in litigation with the ensuing hardships suffered by the workers gave rise to one of the first of the large social insurance programs: workmen's compensation.

The earliest workmen's compensation laws were developed in Germany and Great Britain late in the nineteenth century. Workmen's compensation legislation began to be enacted in the United States in the first decade of the twentieth century. These early laws differed in scope and method but they were all based on the same principle of providing compensation for injury regardless of fault. The aim of workmen's compensation laws was also to replace the uncertainties of litigation. Benefits provided were in part indemnity for wages lost as a result of a work injury and in part medical services made necessary by the injury.

Iowa was among the first states to recognize the plight of the injured worker and to enact a workmen's compensation statute. The Employers' Liability and Workmen's Compensation Commission was appointed by the Governor in 1911 as authorized by the General Assembly. It was the duty of the commission to investigate the problem

of industrial accidents and to recommend to the General Assembly the most efficient method of providing compensation to workers for losses suffered. The recommendation of the committee was in the form of a bill introduced into the General Assembly in 1913. This bill went through a series of amendments before it was signed into law. Iowa's Workmen's Compensation Law, which became fully effective on July 1, 1914, espoused the principle of liability without fault recommended by the commission.

Iowa's law is in three parts: The first concerns itself with employers' liability and workmen's compensation, the second deals with the office of the Industrial Commissioner, and the third part sets forth the standards for compensation liability insurance. The Law is incorporated into the Code of Iowa as Chapters Eighty-five through Eighty-seven.

The original legislation has been amended often to meet the changing needs of the injured worker. Changes have been made principally to extend its coverage and to increase the benefits paid to injured workers. In 1970 the Law was made compulsory on both employers and employees without right of election or rejection. The basic principle of the Law, liability without fault, has continued to this day.

The basic provisions of all workmen's compensation laws examined are quite similar. The benefits provided include periodic cash payments, lump-sum payments and medical services to the worker during a period of disability. They also provide death and funeral benefits to the worker's survivors. Medical benefits, including surgical and hospital benefits, are generally unlimited. Although

the maximum medical benefits are unlimited in Iowa, the permission of the Industrial Commissioner must be obtained before payments beyond seven thousand five hundred dollars can be authorized. Iowa's Law provides for the replacement of sixty-six and two-thirds percent of the worker's wages during periods of disability. The maximum benefit amount for temporary total disability, however, is limited to fifty percent of the State's average weekly wage. The current benefit maximum for temporary total disability in Iowa is sixty-eight dollars per week. Partial disability and death benefits are currently subject to a sixty-three dollar per week ceiling. Permanent partial disabilities are compensated according to a statutory schedule in all jurisdictions examined. The duration of all compensation in Iowa is limited to a fixed number of weeks and the total benefits are governed by a maximum amount written into the law.

The stated intent of Iowa's Workmen's Compensation Law is to replace two-thirds of a worker's weekly wage during total disability. This intent has been defeated by the existence of weekly maximum dollar limits on benefits. In the past, the ratio of benefits to wages declined for each year that there was a lag in enacting statutory changes in the ceiling on the weekly benefit amount. However, in 1970, the Iowa General Assembly passed legislation which served to stabilize the benefit-wage ratio. This was accomplished by making changes in benefits correspond to changes in the state's average weekly wage without need for further legislation. This was a step in the right direction. The next logical step would be to remove the ceiling on benefits and allow the injured worker to be compensated for sixty-six and two-thirds percent of his wages as

stated in the law.

The relationship of benefits to total payroll over the years has remained quite stable in Iowa. This relative stability indicates that changes in the benefit amounts have been keeping pace with economic changes, specifically with changes in employment and wages. Because Iowa's benefits are now increased in tandem with increases in the statewide average weekly wage, it is expected that the benefit-payroll ratio will be further stablized. Any future fluctuations in this ratio, it may be concluded, will follow changes in the magnitude of injuries sustained by Iowa's workers.

Iowa's workmen's compensation benefits fall short of the poverty income guidelines established by the Social Security Administration. However, because the average duration of disability nationally is estimated to be just over seven weeks, it appears that no real hardship will be suffered by the average worker. It is, however, the employee who suffers a disabling injury of long duration and the dependents of fatally injured workers who will be most affected. Unless persons in this group have some supplementary income, the workmen's compensation benefits they receive are not sufficient to keep them above the poverty level. This situation may be remedied, at least in part, by removing the statutory maximums on Iowa's workmen's compensation benefits.

Iowa's law falls short of the criteria for the minimum, or adequate, benefit payment prescribed under the Federal Coal Mine Health and Safety Act. While the standards of the Federal Act are met in part, the insufficiency of Iowa's current benefits make it appear that any claims for disability due to pneumoconiosis in the

state will be administered by the United States Department of Labor beginning January 1, 1973. Such claims may again be processed under Iowa's Workmen's Compensation Law if the General Assembly makes the changes necessary to provide adequate coverage for this disease. In effect, this means raising, or removing, the ceiling that currently exists on benefits.

Although the Iowa law permits an employer to self-insure his workmen's compensation liability, it was discovered that fewer than two-tenths of one percent choose this option. The majority of those that self-insure, however, find it less costly to do so.

A more in-depth study of the scope and adequacy of Iowa's Workmen's Compensation Law was hampered by the general lack of statistics in this area. Sample data had to be used to derive an approximation of the weekly disability benefit actually paid in Iowa in 1970. It was not surprising, therefore, that the actual benefits paid nearly equalled the maximum benefit amount allowed under the law. What has been suspected all during this study was illustrated: That workmen's compensation benefits in Iowa are paid at or near the statutory maximum and that this maximum defeats the stated intent of the law to replace sixty-six and two thirds percent of the injured worker's wage during periods of disability.

In spite of some of its shortcomings, the Iowa Workmen's Compensation Law is a good law. However, future legislative action is required if the Iowa law is to continue to meet the changing needs of the workers it is intended to serve and to keep pace with the benefits granted in other states. To this end, Robert C. Landess, the Iowa Industrial Commissioner, has indicated that a rather exten-

sive workmen's compensation bill will be introduced during the Sixty-fifth General Assembly of Iowa encompassing a number of the recommendations of the National Commission on State Workmen's Compensation Laws.[1]

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[1]Statement by Robert C. Landess, Iowa Industrial Commissioner, personal interview, January 2, 1972.

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APPENDIXES

APPENDIX A

RECOMMENDATIONS OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS[1]

Which Employees Should be Covered

That coverage by workmen's compensation laws be compulsory and that no waivers be permitted.

That employers not be exempted from workmen's compensation coverage because of the number of their employees.

That workmen's compensation coverage be extended to all occupations and industries, without regard to the degree of hazard of the occupation or industry.

That as of July 1, 1973, each agriculture employer who has an annual payroll that in total exceeds $1,000 be required to provide workmen's compensation coverage to all of his employees and that as of July 1, 1975, farmworkers be covered on the same basis as all other employees.

That as of July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent that they are covered by Social Security.

That workmen's compensation coverage be mandatory for all government employees.

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[1]National Commission on State Workmen's Compensation Laws, The Report of the National Commission on State Workmen's Compensation Laws, (Washington: Government Printing Office, 1972), pp. 44-114.

That there be no exemptions for any class of employees, such as professional athletes or employees of charitable organizations.

That the term "employee" be defined as broadly as possible.

That workmen's compensation be made available on an optional basis for employers, partners and self-employed persons.

That an employee or his survivor be given the choice of filing a workmen's compensation claim in the state where the injury or death occurred, or where the employment was principally localized, or where the employee was hired.

Which Injuries and Diseases Should be Compensable

That the "accident" requirement be dropped as a test for compensability.

That all states provide full coverage for work related diseases.

That the "arising out of and in the course of the employment" test be used to determine coverage of injuries and diseases.

That the etiology of a disease, being a medical question, be determined by a disability evaluation unit under the control and supervision of the workmen's compensation agency.

That for deaths and impairments apparently caused by a combination of work-related and non-work-related sources, issues of causation be determined by the disability evaluation unit.

That full workmen's compensation benefits be paid for an impairment or death resulting from both work-related and non-work-related causes if the work-related factor was a significant cause of the impairment or death.

The Relationship Between Workmen's Compensation and Other Possible Remedies for Work-Related Impairments and Deaths

That workmen's compensation benefits be the exclusive liability of an employer when an employee is impaired or dies because of a work-related injury or disease.

That suits by employees against negligent third parties generally be permitted. Immunity from negligence actions should be extended to any third party performing the normal functions of the employer.

The Approach for Determining Benefits

That, subject to the state's maximum weekly benefit, a worker's weekly benefit be at least eighty percent of his spendable weekly earnings.

That, subject to the state's maximum weekly benefit, a worker's weekly benefit be at least sixty-six and two-thirds percent of his gross weekly wage.

That, if the commission's benefit increases for workmen's compensation are adopted, the benefits of other public insurance programs should be coordinated with workmen's compensation benefits. In general, workmen's compensation should be the primary source of benefits for work-related injuries and diseases.

That workmen's compensation benefits not be reduced by the amount of any payments from a welfare program or other program based on need.

Temporary total disability benefits. That the waiting period for benefits be no more than three days and that a period of no more than fourteen days be required to qualify for retroactive benefits for days lost.

That, subject to the state's maximum weekly benefit, temporary

total disability benefits be at least eighty percent of the worker's spendable weekly earnings. This formula should be used as soon as feasible or, in any case, as soon as the maximum weekly benefit in a state exceeds one hundred percent of the state's average weekly wage.

That as of July 1, 1973, the maximum weekly benefit for temporary total disability be at least sixty-six and two-thirds percent of the state's average weekly wage, and that as of July 1, 1975, the maximum be at least one hundred percent of the state's average weekly wage.

That as of July 1, 1977, the maximum weekly benefit for temporary total disability be at least one hundred thirty-three and one-third percent of the state's average weekly wage; as of July 1, 1979, the maximum should be at least one hundred sixty-six and two-thirds percent of the state's average weekly wage, and on and after July 1, 1981, the maximum should be at least two hundred percent of the state's average weekly wage.

That, for all maximum weekly benefits, the maximum be linked to the state's average weekly wage for the latest available year as determined by the agency administering the state employment security program.

Permanent total disability benefits. That the definition of permanent total disability used in most states be retained. However, in those few states which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, we recommend that our benefit proposals be applicable only to those cases which meet the test of permanent total disability used in most states.

That, subject to the state's maximum weekly benefit, permanent total disability benefits be at least sixty-six and two-thirds percent of the workers gross weekly wage. That after a transition period, per-

manent total disability benefits be at least eighty percent of the worker's spendable weekly earnings. This latter formula should be used as soon as feasible or, in any case, as soon as the maximum weekly benefit in the state exceeds one hundred percent of the state's average weekly wage.

That beneficiaries in permanent total disability cases have their benefits increased through time in the same proportion as increases in the state's average weekly wage.

That as of July 1, 1973, the maximum weekly benefit for permanent total disability be at least sixty-six and two-thirds percent of the state's average weekly wage, and that as of July 1, 1975, the maximum be at least one hundred percent of the state's average weekly wage. This amount to be one hundred thirty-three and one-third percent as of July 1, 1977; one hundred sixty-six and two-thirds percent as of July 1, 1979; and at least two hundred percent on and after July 1, 1981.

That total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time.

That, provided the commission's other recommendations for permanent total disability benefits are adopted by the states, the Disability Insurance program of Social Security continue to reduce payments for those workers receiving workmen's compensation benefits.

Permanent partial benefits. That each state undertake a thorough examination of permanent partial benefits and that the Federal government sponsor a comprehensive review of present and potential approaches to permanent partial benefits.

Death benefits. That, subject to the state's maximum weekly benefit, death benefits be at least eighty percent of the worker's spendable weekly earnings. This formula should be used as soon as feasible or, in any case, as soon as the maximum weekly benefit in a state exceeds one hundred percent of the state's average weekly wage. That, on a transitional basis, death benefits be at least sixty-six and two-thirds percent of the worker's gross weekly wage.

That beneficiaries in death cases have their benefits increased through time in the same proportion as increases in the state's average weekly wage.

That as of July 1, 1973, the maximum weekly death benefit be at least sixty-six and two-thirds percent of the state's average weekly wage, and that as of July 1, 1975, the maximum be at least one hundred precent of the state's average weekly wage. This amount to be one hundred thirty-three and one-third percent by July 1, 1977; one hundred sixty-six and two-thirds percent by July 1, 1979; and two hundred percent on and after July 1, 1981.

That death benefits be paid to a widow or widower for life or until remarriage, and in the event of remarriage, that two years' benefits be paid in a lump sum to the widow or widower. Also, that benefits for a dependent child be continued at least until the child reaches eighteen, or beyond such age if actually dependent, or at least until age twenty-five if enrolled as a full-time student in any accredited educational institution.

That the minimum weekly benefit for death cases be at least fifty percent of the state's average weekly wage.

That workmen's compensation death benefits be reduced by the

amount of any payments received from Social Security by the deceased worker's family.

Medical Care and Physical Rehabilitation

That there be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.

That the workmen's compensation agency have discretion to determine the appropriate medical and rehabilitation services in each case. There should be no arbitrary limits by regulation or statute on the types of medical service or licensed health care facilities which can be authorized by the agency.

That the right to medical and physical rehabilitation benefits not terminate by the mere passage of time.

That each workmen's compensation agency establish a medical-rehabilitation division, with authority to effectively supervise medical care and rehabilitation services.

That every employer or carrier acting as employer's agent be required to cooperate with the medical-rehabilitation division in every instance when an employee may need rehabilitation services.

Vocational rehabilitation. That the medical-rehabilitation division be given the specific responsibility of assuring that every worker who could benefit from vocational rehabilitation services be offered these services.

That the employer pay all costs of vocational rehabilitation necessary to return a worker to suitable employment and authorized by the workmen's compensation agency.

That the workmen's compensation agency be authorized to provide special maintenance benefits for a worker during the period of his rehabilitation. The maintenance benefits would be in addition to the worker's other benefits.

Second-injury funds. That each state establish a second-injury fund with broad coverage of pre-existing impairments.

That the second-injury fund be financed by charges against all carriers, state funds and self-insuring employers in proportion to the benefits paid by each, or by appropriations from general revenue, or both sources.

That workmen's compensation agencies publicize second-injury funds to employees and employers and interpret eligibility requirements for the funds liberally in order to encourage employment of the physically handicapped.

The Relationship Between Workmen's Compensation and Other Sources of Accident Prevention Services

That a standard workmen's compensation reporting system be devised which will mesh with the forms required by the Occupational Safety and Health Act of 1970 and permit the exchange of information among Federal and state safety agencies and state workmen's compensation agencies.

That insurance carriers be required to provide loss prevention services and that the workmen's compensation agency carefully audit the services. The agency should insure that all carriers doing business in the state furnish effective loss prevention services to all employers and, in particular, should determine that reasonable efforts are devoted

to safety programs for smaller firms. State-operated workmen's compensation funds should provide similar accident prevention services under independent audit procedures, where practicable. Self-insuring employers should likewise be subject to audit with respect to the adequacy of their safety programs.

That subject to sound actuarial standards, the experience rating principle be extended to as many employers as practicable.

That, subject to sound actuarial standards, the relationship between an employer's favorable experience relative to the experience of other employers in its insurance classification be more equitably reflected in the employer's insurance charges.

Administrative Organization

That each state utilize a workmen's compensation agency to fulfill the administrative obligations of a modern workmen's compensation program.

That in those states where the chief administrator is a member of the appeals board, the governor have the authority to select which member of the appeals board or commission will be the chief administrator. In those states where the administrator is not a member of the appeals board or commission, his term of office should either be indefinite, where he serves at the pleasure of the governor, or be for a limited term, short enough to insure that a governor will, sometime during his term of office, have the opportunity to select the chief administrator.

That the members of the appeals board or commission be appointed for substantial terms.

That agency employees be given civil service status or similar protection.

That the members of the appeals board or commission and the chief administrator be selected by the governor subject to confirmation by the legislature or other confirming body. The other employees of the agency should be appointed by the chief administrator or selected in accordance with the state's civil service procedure. Insofar as practical, all employees of the agency should be full-time, with no outside employment. Salaries should be commensurate with this full-time status.

That an advisory committee in each state conduct a thorough examination of the state's workmen's compensation law in the light of the commission's report.

That the workmen's compensation agency be adequately financed by an assessment on insurance premiums or benefits paid plus an equivalent assessment against self-insurers.

Processing of workmen's compensation claims. That the workmen's compensation agency develop a continuing program to inform employees and employers about the salient features of the state's workmen's compensation.

That the employee or his surviving dependents be required to give notice as soon as practical to the employer concerning the work-related impairment or death. This notice requirement would be met if the employer or his agent, such as an insurance carrier, has actual knowledge of the impairment or death, or if oral or written notice is given to the employer.

That employers be required to report to the agency all work-related injuries or diseases which result in death, in time lost beyond

the shift or working day in which the impairment affects the worker, or in permanent impairment to the worker.

That, for those injuries and diseases which must be reported to the workmen's compensation agency, the period allowed for employees to file claims not begin to run until the employer's notice of the work-related impairment or death is filed with the workmen's compensation agency.

That the administrator of the workmen's compensation agency have discretion under his rulemaking authority to decide which reports are needed in uncontested cases.

That the time limit for initiating a claim be three years after the date the claimant knows or, by exercise of reasonable diligence should have known, of the existence of the impairment and its possible relationship to his employment, or within three years after the employee first experiences a loss of wages which the employee knows or, by exercise of reasonable diligence should have known, was because of the work-related impairment. If benefits have previously been provided, the claim period should begin on the date the benefits were last furnished.

That where there is an appellate level within the workmen's compensation agency, the decisions of the workmen's compensation agency be reviewed by the courts only on questions of law.

That attorneys' fees for all parties be reported for each case, and that the fees be regulated under the rule making authority of the workmen's compensation administrator.

That the workmen's compensation agency permit compromise and release agreements only rarely and only after a conference or hearing before the workmen's compensation agency and approval by the agency.

That the agency be particularly reluctant to permit compromise and release agreements which terminate medical and rehabilitation benefits.

That lump-sum payments, even in the absence of a compromise and release agreement, be permitted only with agency approval.

Reports and statistics. That the administrator have the authority to prescribe the reports which must be submitted by employers, employees, attorneys, doctors, carriers and other parties involved in the workmen's compensation delivery system.

Security Arrangements

That the states be free to continue their present insurance arrangements or to permit private insurance, self-insurance and state funds where any of these types of insurance are now excluded.

That procedures be established in each state to provide benefits to employees whose benefits are endangered because of an insolvent carrier or employer or because an employer fails to comply with the law mandating the purchase of workmen's compensation insurance.

That, because inflation has adversely affected the payments of those claimants whose benefits began when benefits were not at their current levels, a workmen's compensation retroactive benefit fund be established to increase the benefits to current levels for those claimants still entitled to compensation.

APPENDIX B

The one hundred and three companies on the Iowa Insurance Department's list of self-insurers were asked to respond to a brief questionnaire containing a series of questions concerning their experience as self-insured employers. Each employer was assured that his answers would be kept confidential and that only composit data from all responding firms would be reported. The questionnaire was mailed initially on July 14, 1972. Fifty-six, or fifty-four and one-half percent, of the employers responded to the first mailing. A second mailing was directed to the nonrespondents on August 22, 1972. An additional nineteen firms completed and returned their questionnaires after having received the second request.

The seventy-two and eight-tenths percent response, or seventy-five out of one hundred and three, is low considering the brevity of the questionnaire and the fact that a pre-addressed, stamped envelope was included with both mailings.

Five firms returned blank questionnaires, indicating that, although they had applied for and had been granted permission to self-insure in Iowa, they chose to insure their workmen's compensation commercially. Following are the questions to which the seventy firms returning completed questionnaires responded. The responses given are listed numerically and as percentages for each of the questions.

1. Has your company commercially insured its workmen's

compensation liability in the past?

	Number	Percent
Yes	32	45.7
No	38	54.3

2. Has your company ever been refused workmen's compensation liability coverage or had such coverage cancelled?

	Number	Percent
Yes	1	1.4
No	69	98.6

3. How do your costs to self-insure compare with the cost to commercially insure your workmen's compensation liability?

	Number	Percent
Lower	63	90.0
Same	1	1.4
Higher	--	--
Don't know	6	8.6

4. Is your company's financial position such as to enable it to underwrite a possible catastrophic loss?

	Number	Percent
Yes	54	77.1
No	16	22.9

5. Does your company commercially insure a part of its workmen's compensation liability?

	Number	Percent
Yes	55	78.6
No	15	21.4

6. Does your company have a doctor or nurse on the staff to care for injuries as they occur?

	Number	Percent
Yes	33	47.1
No	37	52.9

7. Does your company have a lawyer or other trained professional on the staff to handle claims adjusting?

	Number	Percent
Yes	59	84.3
No	11	15.7

8. Would you estimate the volume of your medical and disability claims to be:

	Number	Percent
Low	33	47.1
Average	33	47.1
High	3	4.4
No response	1	1.4

9. Does your company have an on-going safety program?

	Number	Percent
Yes	66	94.3
No	4	5.7

10. Are your company's employees generally in a single establishment as opposed to being geographically separated?

	Number	Percent
Yes	13	18.6
No	56	80.0
No response	1	1.4

Each employer was also asked to state briefly in his own words the reasons for choosing to self-insure his workmen's compensation liability. The reasons given and the number of employers stating those reasons are summarized below:

Reason given	Number of times
To reduce costs.	51
Promotes better employer-employee relations.	18
Provides better loss control.	13

Claims are paid more promptly.	7
Encourages interest and participation of top management in safety.	5
Can provide more liberal benefits.	4
Part of a negotiated benefit plan.	3
Less paperwork.	2
More efficient.	2
Freedom of choice in attorneys.	1
It is the employer's own responsibility.	1